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THE PUBLIC HEALTH ACTS.

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THE
PUBLIC HEALTH ACTS

ANNOTATED

WITH APPENDICES

CONTAINING

The Various Incorporated Statutes and Orders of the Local Government Board, etc.

FIRST EDITION, PUBLIC HEALTH ACT, 1875, BY

W. G. LUMLEY, LL.M., Q.C., AND EDMUND LUMLEY, B.A.

Counsel to the Local Government Board — *Of the Middle Temple, Barrister-at-Law*

NINTH EDITION

IN TWO VOLUMES

BY

ALEXANDER MACMORRAN, M.A.,

AND

JOSHUA SCHOLEFIELD,

Two of His Majesty's Counsel

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PREFACE.

THE last edition of "Lumley" was published as long ago as 1914. The War put an end to the work of revision for some years, but, when Peace came, the work was again taken up, and every one concerned in the administration of the law of Public Health and Local Government will agree that a new edition is now urgently needed.

It was felt that this need was more pressing as regards Vol. I., and we could see no reason why this volume should not be published in advance. It will be seen that the Housing Acts are now omitted from this volume, and this calls for explanation. It has been generally understood that legislation is in contemplation in regard to these Acts, and it was felt that if the Acts were transposed to Vol. II. the outcome of any legislative activity in the present Session of Parliament could receive due attention.

The unrepealed section [9] of the Contagious Diseases (Animals) Act, 1886, or any substituted legislation was also relegated to Vol. II. for reasons which appear in the Editors' note on p. 734. Since that note was written a Bill has been introduced, and is now pending, whereby it is proposed to enact that the Milk and Dairies (Consolidation) Act, 1915, shall not come into operation before 1st September, 1925, except in so far as it repeals the Milk and Dairies Act, 1914, and the Milk and Dairies Acts Postponement Act, 1915.

In all, some forty-four Statutes have had to be considered in the course of the revision of the Work, and many of them have been inserted *in extenso*. Great care has been taken to ensure that the new case law, of which there is a considerable volume, has been duly inserted in the notes to the Statutes.

Mr. E. Witton Booth, of the Middle Temple, is responsible for the preparation of the Index, and Mr. Erskine Simes, of the Inner Temple, is responsible for the verification of the references in the footnotes, as well as the revision of the proof sheets of the whole Work as it has gone through the press, and our thanks are due to these gentlemen for this and valuable help given by them in other ways.

Readers are again invited to send to the publishers notes of any errors and suggestions for improvement of the book.

A. M.
J. S.

TEMPLE,
22/6/22.

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ADDENDA AND CORRIGENDA.

P. 25, l. 38. The decision in *Hull Corporation* v. *N. E. Rail. Co.* was affirmed by the Court of Appeal ([1916] 1 Ch. 31).

S. 36, P. H. Act, 1875, p. 98. The case of *Carlton Colliery Co.* v. *Hemsworth R. D. C.* has now been heard on appeal and the judgment of P. O. LAWRENCE, J., affirmed. The Court expressed their approval of the judgment in *Nicholl* v. *Epping U. D. C.*, but laid down that the local authority must not only satisfy themselves that the accommodation is insufficient but also that conversion is the only reasonable means of making the accommodation sufficient before ordering conversion.

Note to s. 182, P. H. Act, 1875, p. 436. A bye-law excluding motor traffic from a public park over which the owner of adjoining premises had been granted a right of carriage, horse and footway subject to bye-laws for the protection of the public, etc. was held reasonable (*Att.-Gen.* v. *Hodgson* (1922), 38 T. L. R. 501).

Contagious Diseases (Animals) Act, 1886, p. 734. The text of the Milk and Dairies (Amendment) Bill has now been published. It is proposed to suspend the operation of the Milk and Dairies (Consolidation) Act, 1915, until September 1, 1925, except in so far as it repeals the Milk and Dairies Act, 1914, and the Milk and Dairies (Postponement) Act, 1915. The existing orders and regulations will therefore continue in force. Provision is also made for the refusal and cancellation of dairymen's licences issued under local Acts, and penalties are imposed for the sale of tuberculous or adulterated milk. Power is also given to the Minister of Health to issue licences for the sale of standardised "Grade A" or "Sterilised" milk. The full text of the Bill in the form in which it becomes law will be inserted in Vol. II. with the Consolidation Act of 1915.

S. 60 (1), L. G. Act, 1894, p. 975. The word "fix" means "come to a decision as to." An order made under this subsection dividing a parish into wards but leaving the number of guardians to be elected for the whole parish unchanged is good (*R.* v. *West Riding of Yorks C. C., Ex parte Hemsworth Guardians* (1922), 86 J. P. 102).

S. 39, P. H. Act, 1907, p. 1044. This section does not limit the powers of a local authority under s. 36 of the 1875 Act (*per* WARRINGTON, L.J., in *Carlton Colliery Co.* v. *Hemsworth R. D. C.* (at present unreported)).

Local Government (Adjustments) Act, 1913, note (aa), p. 1085. See also *Southampton C.C.* v. *Bournemouth Borough Council* (1922), 20 L. G. R. 445.

S. 15, Representation of the People Act, 1918, p. 1097. The clerk to a council is not entitled to a superannuation allowance from the council in respect of fees received by him as registration officer (*Holland* v. *Chelsea Borough Council* (1922), 44 M. C. C. 81).

THE PUBLIC HEALTH ACTS.

THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. c. 55.)

An Act for consolidating and amending the Acts relating to Public Health in England. [11th August 1875.]

PART I.

Preliminary.

1. This act may be cited as "The Public Health Act, 1875." Short title.

Construction of Consolidating Acts.

This Act is for the most part a consolidation Act, repealing all previous statutes relating to the Public Health, and re-enacting them with certain amendments. The observations of BRETT, J., in *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154; 39 J. P. 676, as to construing the language used in consolidation statutes, may be usefully referred to. Adverting to the use of several words or forms of expression applicable to statutory offences, he observes: "They are but differences in form; and though they be all, or though several of them be, in one consolidating statute, they are not to be construed by contrast." Then he quotes Greaves on the Criminal Law Consolidation Acts, p. 3: "If any question should arise in which any comparison may be instituted between different sections of any one or several of these Acts, it must be carefully borne in mind in what manner these Acts were framed. None of them was re-written; on the contrary, each contains enactments taken from different Acts passed at different times, and with different views and frequently varying from each other in phraseology; and, for reasons stated in the introduction, these enactments for the most part stand in these Acts with little or no variation in their phraseology, and consequently their differences in that respect will be found generally to remain in these Acts. It follows, therefore, that any argument as to a difference in the intention of the legislature which may be drawn from difference in the terms of one clause from those in another will be entitled to no weight in the construction of such clauses; for that argument can only apply with force where an Act is framed from beginning to end with one and the same view, and with the intention of making it thoroughly consistent throughout." This judgment assumes that the meaning of any particular phrase in any particular section of a consolidating statute is not to be limited by its meaning in some other section, but must be determined with reference to the particular subject-matter dealt with in the particular section.

In *Higgs and Hill, Ltd.* v. *Stepney Borough Council*, [1914] 1 K. B. 505; 78 J. P. 134, CHANNELL, J., said: "When you find an inconsistency in the clauses of a consolidating Act, it may be proper to look at the respective dates of their first enactment to explain that inconsistency; but if there is no inconsistency, the court must interpret the Act as it stands without any regard to the dates of origin of its clauses."

"When once certain words in an Act of Parliament have received judicial construction in one of the superior courts and the legislature has repeated them without any alteration in a subsequent statute, I conceive that the legislature must be taken to

Note to Section 1.

have used them according to the meaning which a court of competent jurisdiction has given to them" (*Ex parte Campbell* (1870), L. R. 5 Ch. 703, *per* JAMES, L.J., at p. 706). See also *Barlow* v. *Teal* (1884), 15 Q. B. D. 403, *per* Lord COLERIDGE, C.J., at p. 405. In *Mitchell* v. *Simpson* (1890), 25 Q. B. D. 183, Lord ESHER said: "The Act (Sheriffs Act) of 1887 is a consolidation Act, and the provision in question is in substantially the same terms as that of the Act of Geo. 2, and therefore in order to determine the meaning of the provision, we must consider to what the Act of Geo. 2 was applicable."

In *In re Budgett, Cooper* v. *Adams*, [1894] 2 Ch. 557, CHITTY, J., drew a distinction between the rules for construing an amending and consolidating Act and a codifying Act: "I referred yesterday to Lord HERSCHELL'S observations in *Bank of England* v. *Vagliano*, [1891] A. C. 144, with reference to the Bills of Exchange Act. Those observations do not, in my opinion, apply to the Bankruptcy Act of 1883. The substance of what fell from Lord HERSCHELL is that where there is an Act such as the Bills of Exchange Act codifying the law, the proper rule of interpretation is to read the Act and to interpret its provisions without reference to previous decisions or to previous legislation, that being a primâ facie rule only to which there would be reasonable exceptions. As his lordship said: 'I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code.' Then he gives some examples, which I need not cite at length. But I have here to deal, not with an Act of Parliament codifying the law but with an Act to amend and to consolidate the law, and therefore it is, I say, those observations do not apply, and I think it is legitimate in the interpretation of the sections in this amending and consolidating Act to refer to the previous state of the law for the purpose of ascertaining the intention of the legislature." See, however, the same judge's remarks in *Thames Conservators* v. *Smeed, Dean & Co.*, [1897] 2 Q. B. 334; *Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387, *per* Lord MACNAGHTEN; *The Fulham*, [1899] P. 251, *per* SMITH, L.J.; *Couper* v. *Mackenzie* (1906), 8 F. 1202; *Williams* v. *Permanent Trustee Co. of N. S. W.*, [1906] A. C. 249; and *Wernham* v. *R.*, [1914] 1 K. B. 468, *per* BAILHACHE, J. In *R.* v. *Abrahams*, [1904] 2 K. B. 859, Lord ALVERSTONE, C.J., said: "The contention is, and to that extent I think it is well founded, that in a consolidation Act, where there are ambiguous expressions, regard may be had to the previous Act of Parliament *in pari materiâ* for the purpose of interpreting those ambiguous expressions."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis.

Under the London Government Act, 1899, s. 19, Woolwich is now part of the metropolis for all purposes, and the provisions of this Act which were made applicable to it by the P. H. (London)) A., 1891, s. 102, no longer apply to it.

Division of Act into parts.

3. This Act is divided into parts, as follows:

Part I.—Preliminary.
Part II.—Authorities for Execution of Act.
Part III.—Sanitary Provisions.
Part IV.—Local Government Provisions.
Part V.—General Provisions.
Part VI.—Rating and Borrowing Powers, etc.
Part VII.—Legal Proceedings.
Part VIII.—Alteration of Areas and Union of Districts.
Part IX.—Local Government Board.
Part X.—Miscellaneous and Temporary Provisions.
Part XI.—Saving Clauses and Repeal of Acts.

Besides these parts, the Act contains five schedules containing Rules for the proceedings of local boards, for the proceedings of committees (now repealed) for

the election of members of such boards (now repealed), for the convening of meetings of owners and ratepayers, and for the proceedings thereat, forms for numerous objects and the Repeal of previous Acts.

Note to Section 3.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say,

Definitions.

Effect of interpretation clauses.

In *R.* v. *Cambridgeshire JJ.* (1838), 7 A. & E. 491, Lord DENMAN, C.J., said: "We apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should." In *Att.-Gen.* v. *Worcester Corporation* (1846), 15 L. J. Ch., at p. 399, Lord COTTENHAM, L.C., said: "The object of these Acts being framed with interpretation clauses is, by the means and through the agency of the interpretation clause, to avoid the necessity of frequent repetition in describing all the subject-matter to which the Act was intended to apply. It uses, therefore, an expression, and then, by the interpretation clause, declares that that expression shall have certain meanings other than the ordinary meaning of the word used, and the way to apply that interpretation clause is, when you find the word used in other enactments, to follow the direction of the interpretation clause, and, according to the subject-matter, to read it as if it contained the other words which by the interpretation clause it is meant to include." In *Lindsay* v. *Cundy* (1876), 1 Q. B. D. 348, BLACKBURN, J., said: "The interpretation clause is a modern innovation, and frequently does a great deal of harm, because it gives a non-natural sense to words which are afterwards used in a natural sense without noticing the distinction." In another case he said: "It is a common practice in modern Acts to introduce interpretations into Acts. I am old enough to remember when that was a novelty, and the older draughtsmen said, likely to be a very mischievous novelty. I think that experience has shown that the older draughtsmen had some reason, but the practice is now inveterate" (*Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364). Such a clause ought, therefore, to be strictly construed (*Allsop* v. *Day* (1861), 7 H. & N., at p. 463, *per* POLLOCK, C.B.). In *Midland Rail. Co.* v. *Ambergate, etc. Rail. Co.* (1853), 10 Hare, at p. 369, WOOD, V.-C., said: "With regard to all these interpretation clauses, I understand them to define the meaning, supposing there is nothing else in the Act which is opposed to the particular interpretation." And in *R.* v. *Pearse* (1880), 5 Q. B. D., at p. 389, LUSH, J., said: "An interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." See also the observations of Lord CAMPBELL, C.J., in *R.* v. *Sudbury Burial Board* (1858), El. B. & E. 264; of WILLES, J., in *Ablert* v. *Pritchard* (1866), L. R. 1 C. P. 214; of Lord ST. LEONARDS, in *Dean of Ely* v. *Bliss* (1852), 2 De G. M. & G., at p. 471; and of Lord SELBORNE, in *Robinson* v. *Barton Eccles L. B.*, on p. 15, *post*.

It is right to notice the remark, *per* GIFFARD, L.J., in *Ex parte Morris* (1869), L. R. 5 Ch. 174: "General words will not be so construed as to destroy special exemptions or special privileges"; see also *Thorpe* v. *Adams* (1871), L. R. 6 C. P. 125, and *Earl of Derby* v. *Bury Commissioners* (1869), L. R. 4 Ex. 222, where this proposition is well illustrated. In *Ebbs* v. *Boulnois* (1875), L. R. 10 Ch. 484, JAMES, L.J., observes: "It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other." See also on this point, *Taylor* v. *Oldham Corporation*, p. 16, *post*.

See further as to interpretation clauses, notes under the definitions of "union" and "street" in this section, *post*, pp. 6, 15.

As to the application of these definitions to incorporated enactments, see *Sale* v. *Phillips*, p. 8, *post*, and cases as to "street" on p. 18, *post*.

"Borough."

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William

Section 4.

the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any act amending the same:

These Acts have all been repealed and for the most part re-enacted by a consolidating and amending statute, the Municipal Corporations Act, 1882, which applies (s. 6) to every city and town to which the Municipal Corporations Act, 1835, applied at the commencement of the Act (*i.e.*, January 1st, 1883), and to any town, district, or place, whereof the inhabitants are incorporated after the commencement of the Act, and whereto the provisions of the Municipal Corporations Acts are under the Act extended by charter, but to no other place. For a similar definition, see the Interpretation Act, 1889, s. 15.

"The Metropolis."

"The metropolis" means the city of London and all parishes and places mentioned in Schedules A., B., and C., to the Metropolis Management Act, 1855 [18 & 19 Vict. c. 120]:

For a list of the parishes and places mentioned in such Schedules, see Woolrych's Metropolis Management Acts, 3rd ed., p. 149. By the express mention of the city of London, the definition of the metropolis contained in the previous Act is rendered more exact. Note that it does not extend to the *Metropolitan Police District*, as to the limits of which see 10 Geo. 4, c. 44: 2 & 3 Vict. c. 47, and amending Acts collected in 9 Chitty's Statutes, "Police (Metropolis)," p. 108.

Woolwich is now part of the metropolis. See the note to s. 2, *ante*, p. 2.

"Local government district"; "local board."

"Local government district" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted:

The "Local Government Acts" were (see Schedule V., Part I., *post*) the Public Health Act, 1848; the Local Government Act, 1858; the Local Government Act (1858) Amendment Act, 1861; and the Local Government Amendment Act, 1863.

As to the constitution of local government districts in pursuance of this Act, see ss. 271, 272, *post*.

The restricted meaning of the phrase "local board" should be noticed.

This definition is retained, as the expression is used in this Act; but by the L. G. A., 1894, s. 21 (1), *post*, the districts of urban sanitary authorities are now called urban districts, and local boards urban district councils.

"Improvement Act district."

"Improvement Act district" means any area for the time being subject to the jurisdiction of any Improvement Commissioners as hereinafter defined:

"Improvement Commissioners."

"Improvement Commissioners" means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating:

This definition was taken from the P. H. A., 1872, s. 60, but the term "town government" occurred in 24 & 25 Vict. c. 61. It is not clear what the term implies here, as it is most appropriately applied to a municipal corporation. But the P. H. A., 1848, s. 10, suggests a reasonable explanation of the term as signifying "paving, lighting, cleansing, watching, regulating, supplying with water, or improving" any place where there is also a power of rating. Improvement Commissioners are now called urban district councils and their districts urban districts. See the L. G. A., 1894, s. 21 (1), *post*, p. 926.

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"Parish."

"Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

This definition was adopted from the Poor Law Amendment Act, 1866, s. 18. Overseers are and may be appointed for places or districts distinct from parishes. By the Interpretation Act, 1889, s. 5, in every Act passed after the year 1866 the expression "parish" means, unless the contrary intention appears, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which an overseer is or can be appointed. Such definition supersedes that in the text, but is practically identical.

Places formerly extra-parochial.

Extra-parochial places have now practically disappeared, for by the Extra-Parochial Places Act, 1857, s. 1, every place entered separately in the report of the Registrar-General on the last census which then was or was reputed to be extra-parochial, and wherein no rate was levied for the relief of the poor, was in future for all purposes of the assessment to the poor rate to be deemed a parish; and the justices having jurisdiction in such place were to appoint overseers therein. And by the Poor Law Amendment Act, 1868, s. 27, every place which was or was reputed to be extra-parochial, whether entered in the Registrar-General's report or not, for which no overseer had been appointed, or was then acting, or which had not then been annexed to and incorporated with an adjoining parish under s. 4 of the Act of 1857, was for all civil parochial purposes to be annexed to and incorporated with the next adjoining parish with which it had the largest common boundary, and in case there should be two or more parishes with which it had boundaries of equal extent, then with that parish which contained the lowest amount of rateable value. Portions of Windsor Castle, Exeter Castle Yard, Lundy Island and certain other islands and lighthouses are still extra-parochial.

Land between high and low water marks; accretions from the sea.

Formerly, when a parish extended up to the sea-shore or a tidal river, but there was nothing to show whether it did or did not extend beyond the line of ordinary or medium high water, land below such high-water line could not be assumed to be within the parish (*Duke of Bridgewater's Trustees* v. *Surveyors of Highways of Bootle-cum-Linacre* (1866), L. R. 2 Q. B. 4; 30 J. P. 725; see also *R.* v. *Musson* (1858), 22 J. P. 609; 8 El. & Bl. 900; *McCannon* v. *Sinclair* (1859), 23 J. P. 757; 2 El. & El. 53; *Ipswich Dock Commissioners* v. *St. Peter's, Ipswich* (1866), 30 J. P. 820; 7 B. & S. 310). But by the Poor Law Amendment Act, 1868, s. 27, every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on December 25th, 1868, had not been included within the boundaries of or annexed to and incorporated with any parish, was for all civil parochial purposes annexed to and incorporated with the parish to which such accretion, part, or bank adjoined in proportion to the extent of the common boundary. In *Blackpool Pier Co.* v. *Fylde Union* (1877), 46 L. J. M. C. 189; 41 J. P. 344, a pier was constructed of a wooden deck resting on iron piles driven into the sands, so that the water flowed under it, and no alteration was made in the line of low water. It was held that the part of the pier beyond low-water mark, being beyond the realm, was neither extra-parochial nor an accretion from the sea within s. 27, and as such annexed to the parish. In *Barwick* v. *S. E. Ry. Co.*, [1921] 1 K. B. 187; 85 J. P. 65, it was held that the widening of a pier at Dover which resulted in the reclamation from the sea of about 12 acres of land was an accretion within s. 27, and as such annexed to the parish. The widening was effected by the construction of solid masonry walls and chalk filling in the intervening space.

In a recent Scotch case it was held that the boundary of a burgh fixed by statute as "low-water mark" of the sea, followed that mark as it varied from time to time through natural fluctuation or was altered by artificial operations; and that accordingly, piers consisting of solid structures of stone, erected so as to extend below the natural low-water mark, were situated wholly within the burgh (*Leith Docks Commissioners* v. *Leith Magistrates*, [1911] S. C. 1139; followed in *Christie* v. *Leven Magistrates*, [1912] S. C. 678). See also *Fearon* v. *Warrenpoint U. D. C.*, in notes to the P. H. A., 1907, s. 94, *post*. For the general law as to accretion, see *Att.-Gen.* v. *McCarthy*, [1911] 2 I. R. 260. In *A.-G. of Southern Nigeria* v. *Holt & Co.*, [1915] A. C. 599, it was held that certain reclaimed lands which were the result of

Note to Section 4. artificial works carried out by the respondents vested in the Crown, but subject to the riparian rights and easements of the respondents.

"Union." "Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament (*a*), and includes (*b*) any parish (*c*) subject to the jurisdiction of a separate board of guardians:

"Guardians." "Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union (*d*):

(*a*) Before the L. G. A., 1894, the union, exclusive of any urban district within it, was coterminous with the rural sanitary district. Unions were mostly formed under 4 & 5 Will. 4, c. 76; a few were constituted under special local Acts, but these were urban districts. Since the Act of 1894 the rural district is no longer necessarily coterminous with the rural part of the union, which may include more than one rural district. See *ibid.*, s. 24 (5), *post*.

"Means"; "includes." (*b*) In *R.* v. *Kershaw* (1856), 20 J. P. 741; 6 El. & Bl. 1007, ERLE, J., points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an extending and the latter an excluding effect. But the word "include" may be equivalent to "mean and include" and so have an excluding effect (*Dilworth* v. *Commissioner of Stamps*, [1899] A. C. 99). See further as to its meaning, *Worsley* v. *South Devon Rail. Co.* (1851), 16 Q. B. 539; *Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, 291, *per* BLACKBURN, J.; 35 J. P. 468; *Jones* v. *Cook* (1871), L. R. 6 Q. B. 505; 35 J. P. 403; *Pound* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B., *per* BLACKBURN, J., at p. 194; 36 J. P. 468; *Baker* v. *Portsmouth Corporation* (1877), 3 Ex. D. 4, 157; *Robinson* v. *Barton Eccles L. B.* on p. 15, *post*; *Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375; 43 J. P. 635. A provision that some term shall "extend to" or "apply to" certain specified things or persons does not necessarily exclude some other thing or person within its natural meaning (*Doe* v. *Benham* (1845), 7 Q. B. 976; *Regent's Canal and Dock Co.* v. *London C. C.* (1909), 73 J. P. 276; 7 L. G. R. 680).

"Extend to"; "apply to."

(*c*) For parishes and places out of the metropolis under a separate board of guardians, see the Poor Law General Orders, 2nd ed., by Macmorran and Naldrett, p. 306. Some of these are urban sanitary districts of themselves, or contain such within their area.

(*d*) This word includes a parish under a separate board of guardians (see *supra*).

"Person." "Person" includes any body of persons, whether corporate or unincorporate:

In the P. H. A., 1848, s. 2, this word was applied to corporations aggregate or sole. It is presumed that the latter are included here.

In *Pharmaceutical Society* v. *London and Provincial Supply Association, Ltd.* (1880), 5 App. Cas. 857; 45 J. P. 20, Lord SELBORNE, at p. 861, said: "There can be no question that the word 'person' may, and I should be disposed myself to say primâ facie does, in a public statute, include a person in law: that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten that in its popular sense and ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the popular use of language; and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent occurrence in some statutes, in interpretation clauses, of an express declaration that it shall extend to a body politic or corporate."

By the Interpretation Act, 1889, s. 2 (1) (re-enacting 7 & 8 Geo. 4, c. 28, s. 14): "In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after

the commencement of this Act, the expression 'person' shall, unless the contrary intention appears, include a body corporate." And by *ibid.*, s. 19: "In this Act and in every Act passed after the commencement of this Act the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate." **Note to Section 4.**

In the following cases the word has been held to include a corporation: *Pearks, Gunston and Tee, Ltd.* v. *Ward*, [1902] 2 K. B. 1; 66 J. P. 774; *In re Thompson's Trusts*, [1905] 1 Ch. 229; *R.* v. *Antrim JJ.*, [1906] 2 I. R. 298; *Hirst* v. *West Riding Union Banking Co.*, [1901] 2 K. B. 560; *Chuter* v. *Freeth and Pocock, Ltd.*, [1911] 2 K. B. 832; 75 J. P. 430; *R.* v. *Ascanio Puck & Co., Ltd.* (1912), 76 J. P. 487; 29 T. L. R. 11; and *cf. R.* v. *Gainsford* (1913), 29 T. L. R. 359 ("occupier"); *Evans* v. *London C. C.* (1914), 30 T. L. R. 509 ("occupier"); in the following it was held not to do so: *Pharmaceutical Society's Case, supra; Wills* v. *Tozer* (1904), 53 W. R. 74; *Walker* v. *Richardson* (1837), 2 M. & W. 882; *O'Duffy* v. *Jaffe*, [1904] 2 I. R. 27; *Mylam* v. *Market Harborough Advertiser Co., Ltd.*, [1905] 1 K. B. 708; *Hawke* v. *E. Hulton & Co., Ltd.*, [1909] 2 K. B. 93; 73 J. P. 295

As to when the word does or does not include an infant, a woman, or a married woman, see cases collected in *In re Royal Naval School*, [1910] 1 Ch. 806, and *Bebb* v. *Law Society*, [1914] 1 Ch. 286.

As to the meaning of "person" in a lease, see *Willmott* v. *London Road Car Co.*, [1910] 2 Ch. 525.

"Local authority" means urban sanitary authority and rural sanitary authority: "Local authority."

See s. 5, *post*, p. 37.

"Surveyor" includes (*a*) any person appointed by a rural authority to perform any of the duties of surveyor under this Act (*b*): "Surveyor."

(*a*) See as to the meaning of this word, note (*b*) on p. 6, *ante*.

(*b*) This word is thus defined with reference to a rural sanitary authority because such an authority may not in many cases appoint a special officer as their surveyor under this Act. See s. 190, *post*, as to the powers of a rural authority to appoint officers or servants.

"Lands" and "Premises" include messuages buildings lands easements and hereditaments of any tenure: "Lands"; "premises."

The definition of *premises* avoids difficulties in the interpretation of the word, such as arose with reference to s. 3 of the Factory Act, 1867, in *Kent* v. *Astley* (1869), L. R. 5 Q. B. 19, and *Redgrave* v. *Lee* (1874), L. R. 9 Q. B. 363. As the context may in any particular case require a departure from the definition, reference may be made to cases in which the meaning of the word in a local Act was discussed (*Metropolitan Water Board* v. *Paine*, [1907] 1 K. B. 285; 71 J. P. 63; *Metropolitan Water Board* v. *Johnson*, [1913] 3 K. B. 900; 77 J. P. 384).

By the Interpretation Act, 1889, s. 3, in every Act passed after the year 1850, unless the contrary intention appears, the expression "land" includes messuages, tenements, and hereditaments, houses and buildings of any tenure. That definition omits "easements." It was intimated in *Oldacre* v. *Hunt* (1855), 6 De G. M. & G., at p. 390, that the word "land," as defined by the P. H. A., 1848, s. 2, included a right of fishery. The Lords Justices gave no express decision on this point; but it is to be observed that the definition in that section did not include the word *easement*, which was introduced into the present definition as a new term. A right of water to a mill is an easement (*Cleckheaton U. D. C.* v. *Firth* (1898), 62 J. P. 536). Land. Easements.

The term *hereditaments* includes every kind of property that can be inherited. Hereditaments are corporeal or incorporeal. The former are tangible, and are practically the same as land; the latter are not tangible, but are the rights and profits annexed to or issuing out of land, *e.g.*, tithes, rents, rights of common, etc. Hereditaments.

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A church was held not to be "land" within the Metropolis Management Amendment Act, 1862, s. 77 (*Angell* v. *Paddington Vestry* (1868), L. R. 3 Q. B. 714; 32 J. P. 742; and see *Wright* v. *Ingle* (1885), 16 Q. B. D. 379). A railway was carried across a new street by an arch. On one side of the street it was carried forward on arches, and on that side was a strip of land ten feet wide left open for the purpose of repairing the arches; this abutted for ten feet on the street. On the other side the railway was carried forward on an embankment, and the sloping part of the embankment abutted on the street about thirty-six feet; at the foot of the embankment was an open space about thirty-six feet wide, also abutting on the street, and left for the purpose of allowing of slips in the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land* within s. 77, *supra* (*Higgins* v. *Harding* (1872), L. R. 8 Q. B. 7; 37 J. P. 677; and see *G. E. Rail. Co.* v. *Hackney District Board*, on p. 12, *post*). See also the next note.

"Owner."

"Owner" means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent:

"Means."

The word *means* appears to be restrictive, and to imply that what follows is to be the only interpretation of the word *owner*, so that an owner in fee who has let land on a nominal ground rent is not within the definition. See note (*b*) on p. 6, *ante*, and cases, *infra*.

This definition applies in construing the provisions of the Town Police Clauses Act, 1847, as to fires, incorporated by s. 171. See *Sale* v. *Phillips*, [1894] 1 Q. B. 349; 58 J. P. 460.

Intermediate lessors as owners.

By the Nuisances Removal Act, 1855, s. 2, the word *owner* included any person receiving the rent of the property in respect of which the word was used from the occupier of such property, on his own account, or as trustee or agent for any other person. A. was lessee for twenty-one years, at a rack-rent, of a house and shop; he occupied the shop himself, and sublet the upper part of the house to B. as a yearly tenant. The upper part was shut off from the shop, and A. had no access to it. A privy in the upper part of the house caused a nuisance arising from defective construction of a structural convenience: and the authority proceeded against C., who received the rent from A. as agent for A.'s landlord:—*Held*, that C. was not owner, as he did not receive the rent from B., who was the occupier of the premises on which the nuisance arose, and of which A. was the owner (*Cook* v. *Montague* (1872), L. R. 7 Q. B. 418; 37 J. P. 53). It is to be observed that the words "from the occupier of such property," which occur in the Nuisances Removal Act, are not in the text. It appears from the cases cited below that where there are intermediate lessors, and the rent received by each is the same, the person ultimately receiving the rent is the owner; but that a lessor receiving from his lessee more rent than he pays, is the owner within this definition. In *Rice* v. *White*, [1904] 2 I. R. 8, parts of a tenement were sublet to weekly tenants by F., who herself occupied the residue of the tenement. The annual value of the premises under the Valuation Acts was £38. F. was lessee for a term of 31 years at a yearly rent of £34. The rents received from the sub-tenants amounted in all to £107 a year, and the letting value of the rooms retained by F. was £19 per year. It was held (applying *Bowen* v. *James* (1882), 10 L. R. Ir. 26) that F. was the owner of the premises for the purposes of the P. H. (Ireland) A., 1878, in which the definition of "owner" is the same as in this Act. In *Walford* v. *Hackney Board of Works* (1894), 43 W. R. 110, H. let premises to W. for a term of years at the rent of £25, subsequently increased to £31; W. sublet the premises, agreeing to accept the same rent as he himself paid, and paid it over to H. without any deductions; it was held that W. was not the "owner" of the premises. In *Truman, Hanbury, Buxton & Co.* v. *Kerslake*, [1894] 2 Q. B. 774; 58 J. P. 766, it was held that where the lessee of premises not let at a rack-rent has sublet them

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for his whole term, less a few days, the rent reserved and the covenants and conditions being the same as in the original lease, the sub-lessee, and not the lessee, is the "owner" within this definition. In *Field & Sons* v. *Southwark Borough Council* (1907), 71 J. P. 240; 96 L. T. 646, the leaseholders of a house and premises, let them to B., who covenanted not to sublet. He then, without their consent, sublet each floor to a separate tenant. The water supply of the house would have been sufficient if it had been in the occupation of one tenant, but the only water supply available for the tenant of the top floor was that provided by a tap in the yard. It was held that no order could be made against the leaseholders as "owners" under s. 48 of the P. H. (London) A., 1891, to abate the nuisance of there being an insufficient supply for the top floor, since the house could not be treated as an occupied house for the purposes of s. 48, in which the words "occupied house" mean a "structure as let," and since, even if it could be so treated, the leaseholders not being in receipt of the rack-rent, were not "owners" within the Act. See also cases decided under the London Building Acts on p. 10, *post.*

It being admitted that a plaintiff held certain premises as tenant of F. under a lease dated in 1883, the plaintiff put in evidence such lease by which F.'s predecessor leased the premises to the plaintiff's predecessor, for the residue (less seven days) of a term of eighty years from 1840, at a rent of £60 *per annum.* It was held that the plaintiff had given some, but not satisfactory evidence, that F. was receiving a "rack-rent," and was therefore "owner" within this definition (*Wareham and Dale, Limited* v. *Fyffe* (1910), 74 J. P. 249; 8 L. G. R. 620).

Occupiers under building agreements.

The Metropolis Management Act, 1855, s. 250, defines "owner" in the same words as the text. The builder of houses abutting on a new street occupied the land under a building agreement, by which the owner of the land agreed to demise to the builder, or his nominees, the several pieces of land upon which he was to build, as the houses and buildings respectively became erected and covered, for eighty years, at the rent of a peppercorn for two years, and of sums increasing every year up to £364 in the sixth and following years. He was to be considered as holding the undemised portion on the terms of the leases. There was a power of re-entry upon non-completion of the building covenants. The houses, at the date when the expenses which were the subject of the action were incurred, were in every stage of progress, and some had been demised to other persons at the builder's nomination:—*Held*, that with the exception of the houses so demised to other persons, he was liable as owner of all the premises. *Per* BLACKBURN, J.: "He was in actual occupation; his peppercorn rent was to be raised to a ground rent. There could not be a reason for saying that the freeholder was receiving the rack-rent. It may be a substantial rent, but not such as to prevent the defendant from being the owner" (*Poplar Board of Works* v. *Love* (1874), 29 L. T. 915). In *Lady Holland* v. *Kensington Vestry* (1867), L. R. 2 C. P. 565; 31 J. P. 758, A., being owner in fee of land, entered into a building agreement, whereby B. agreed to build certain houses on part of the land, and to lay out the remainder as a garden for the exclusive use of tenants of the houses, and A. agreed to grant to B. a lease of each house as it was built, and of the garden with the last house; and it was expressly agreed that B. should have no interest in any house or land until a lease of it was granted. B. built some of the houses, but not all, and laid out the garden, and A. subsequently sold the reversion of the houses which were built to C. The vestry, having paved a road running past the garden, claimed repayment of the expense from A. It was held that A. was the owner of the garden, and therefore liable. *Per* WILLES, J.: "If the houses had been all built, and B. had obtained a lease of the garden, he would have been trustee for the inhabitants of the houses under the section. But at present A. is the legal owner, subject only to certain easements possessed by the inhabitants of the houses that have been built, and to the consideration that if and when certain acts are done she will be bound to grant the legal estate to B. It may be that she only holds as trustee for the inhabitants of the houses, but it is not only the beneficial owner, but the owner who holds as trustee for others, that is liable to make the payments under the Acts." This decision was followed in *Driscoll* v. *Battersea Borough Council*, [1903] 1 K. B. 881; 67 J. P. 264. In that case the building agreement, which described the freeholder as the intended lessor, and the builder as the intended lessee, was to the effect that the

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builder might enter upon and retain possession of the land in question, and should erect thirty-two houses thereon. Until leases had been granted of all the plots the builder was to pay to the freeholder a rent of £200 per annum (which was not in fact a rack-rent), or so much thereof as should not have been reserved by leases actually granted. On the completion of each house, and on payment of all moneys due, the freeholder was to grant a lease for ninety-nine years. The freeholder had power to distrain for any part of the £200. It was expressly provided that the contract was to operate as an agreement only, and not as an actual demise of the premises, or to give the builder any legal interest therein until the contemplated leases of the completed houses were executed. The £200 was duly paid, but no houses had been erected or buildings commenced. See also cases decided under the London Building Acts, *infra*.

"Ownership" under London Building Acts.

The Metropolitan Building Act, 1855, s. 3 (now replaced by the London Building Act, 1894, s. 5 (29)), provided that the word *owner* should apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term, or as a tenant at will. It was held that an owner of land in fee simple, who let it on a building lease at a peppercorn rent, was not liable as owner, such a rent not being within the meaning of the section (*Evelyn* v. *Wychcord* (1858), 22 J. P. 658; El. B. & E. 126). And see *List* v. *Tharp*, [1897] 1 Ch. 260; 61 J. P. 248. In *Caudwell* v. *Hanson* (1871), L. R. 7 Q. B. 55; 36 J. P. 470, a freeholder agreed with L. to grant him long leases of certain plots of land, so soon as L. should have erected houses thereon, at a peppercorn rent until June 24th, 1870, and afterwards at £28 a year. L. built houses which were roofed in about September, 1870, but leases had not been granted. It was held that L. was the "owner" thereof, and that it was immaterial whether his title was legal or equitable only. And see to the same effect *St. Helen's Corporation* v. *Riley* (1883), 47 J. P. 471. In *Cowen* v. *Phillips* (1863), 33 Beav. 18, it was held that a tenant in possession, having an equitable interest only under an agreement for a lease for a term of three years, was in equity an owner under this section. In *Hunt* v. *Harris* (1865), 19 C. B. (N.S.) 13, the lessee of a house for a long term who had sublet it in different portions to different tenants, and who was in receipt of the rents from such sublettings, was held to be the owner of the party-wall of such house within the meaning of the above section, notwithstanding that the sublettings created a greater interest in the subtenants than that of a yearly tenancy. The last mentioned case and *Cowen* v. *Phillips*, *supra*, were discussed in *Fillingham* v. *Wood* [1891] 1 Ch. 51. There it was held that a tenant in possession of part of a house under an agreement for a greater interest than as tenant from year to year was an adjoining owner entitled to be served with a party-wall notice under the Act, and that service on a person in receipt of the whole of the rents of the tenement was not sufficient. In *Mourilyan* v. *Labalmondiere* (1861), 25 J. P. 340; 1 El. & El. 533, the appellants were seised in fee of a building used as a chapel which they had let on lease for twenty-one years. It was held that they were not, but that the lessee was, the owner within the meaning of the section. In *R.* v. *Lee* (1878), 4 Q. B. D. 75; 43 J. P. 302, it was held that the incumbent of a district church was not the owner within the above section, although the freehold of the church was vested in him, as he neither received the rents or profits of the church nor was in occupation of it. But in *Folkestone Corporation* v. *Woodward* (1872), L. R. 15 Eq. 159, where it was held that a church was a house for the purposes of a local Act prescribing a building line, a perpetual curate, in whom the freehold was vested, was held to be the owner. In *Regent's Canal and Dock Co.* v. *London C. C.* (1909), 73 J. P. 276; 7 L. G. R. 680, it was held that a canal company were owners within the meaning of the section of a bridge across their canal which they had built as part of the canal undertaking.

Churches and chapels.

As to the "ownership" of churches and chapels under the London Building Acts, see cases, *supra*. The Ecclesiastical Commissioners, in whom a church not built by them was vested, were held not to be the owners for the purposes of the Metropolis Management Acts (*Angell* v. *Paddington Vestry* (1868), L. R. 3 Q. B. 714; 32 J. P. 742). By the Church Building Acts Amendment Act, 1845, s. 13, the "freehold of the site of every church" of which the commissioners therein mentioned

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shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated:—*Held*, that upon such consecration, the whole of the land so conveyed to the commissioners vested in the incumbent; that the commissioners ceased to be the owners of it, and were therefore not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street (*Plumstead District Board of Works* v. *Ecclesiastical Commissioners for England*, [1891] 2 Q. B. 361; 55 J. P. 791). The position of an incumbent in respect of poor rates on land acquired as a burial ground under the Church Building Acts was recently discussed in *Winstanley* v. *North Manchester Overseers*, [1910] A. C. 7; 74 J. P. 49. The trustees of a dissenting chapel, registered as a place of religious worship, were held liable for paving expenses under the Metropolis Management Acts, as the owners of a house in *Caiger* v. *St. Mary, Islington, Vestry* (1881), 50 L. J. M. C. 59; 45 J. P. 570. And a leasehold chapel vested in trustees on trust, to permit it to be used as a place of religious worship by a congregation of Wesleyans, was held to be a house within the meaning of the same Acts, and the trustees were held to be owners thereof, on the ground that by consent of the landlord, the trustees, and the *cestuis que trustent*, the trusts might at any moment be put an end to (*Wright* v. *Ingle* (1885), 16 Q. B. D. 379; 50 J. P. 436). The defendants were trustees of a chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purpose of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members; but the money received did not cover the cost of the entertainments. A bazaar and a sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to one of the defendants, and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under s. 150 of this Act requiring them to pave, etc. the portion of the street upon which the chapel abutted, the complainants executed the work, and obtained an order of justices for repayment by the defendants of the expenses incurred:—*Held*: that the defendants were the "owners" of the premises, that they did not come within s. 151, which exempts from liability "the incumbent or minister of any church, chapel, or place appropriated to public religious worship," and that the order of the justices was therefore rightly made (*Hornsey L. B.* v. *Brewis* (1890), 60 L. J. M. C. 48; 55 J. P. 389).

Roads.

The owner of private roads was held to be "owner" of land within the Metropolis Management Acts (*Pound and Lord Northbrook* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 36 J. P. 468). But a land society which had set out and dedicated roads to the public, and sold off the building plots fronting them, was held by the Exchequer Chamber not to be owners of land within the Act (*Plumstead Board of Works* v. *British Land Co.* (1875), L. R. 10 Q. B. 203; 39 J. P. 376) Lord COLERIDGE, C.J., distinguished *Pound* v. *Plumstead Board of Works*, *supra*, on the ground that Lord Northbrook had there "for his own purposes determinately reserved his property in the private roads to himself. He might at any time have put an end to the dedication of them to his own tenants, which was all he had ever done. There was no dedication of it to the public, and there was nothing done past recall." Also, referring to *Angell* v. *Paddington Vestry*, *supra*, he indicated an opinion that when expenses are sought to be recovered under such Acts as the P. H. Acts from persons as owners of land, it is not enough that they should be owners of land or houses, "for real property purposes," but they must be "the owners of land which could be let at a rack-rent within the meaning of the statute." It may be observed in this connection, that the owner of the soil of a street dedicated to public use as a highway may be properly described as owner of land for real property purposes, although by reason of the highway being incapable of being

Premises not lettable at a rack-rent.

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let at a rack-rent, he cannot, as such owner, be charged with such expenses as paving expenses. So, too, damage to a road by traffic has been held to be damage to "property" (*Croydon R. D. C.* v. *Sutton District Water Co.* (1908), 72 J. P. 217). The decision in *Plumstead Board of Works* v. *British Land Co.*, *supra*, was followed by POLLOCK, B., in *Hampstead Vestry* v. *Cotton* (1885), 16 Q. B. D. 475; 50 J. P. 453. It was also followed in *Macey* v. *Executors of James* (1917), 81 J. P. 213. where it was held that a person who is the owner of the soil of a public highway is not an owner within this section so as to be liable under s. 94, *post*, p. 176, to abate a nuisance alleged to exist upon the highway. In *Wright* v. *Ingle*, *supra*, BOWEN, L.J., said: "The section does not confine the term 'owner' to those persons who could receive a rack-rent from the particular premises, or who could let them at a rack-rent; it includes those persons who would receive the rack-rent if the premises were let at a rack-rent, and I think *Bowditch* v. *Wakefield L. B.*, *infra*, is a conclusive authority, if authority were wanted, to show that a man is not the less the owner of premises because, by the provisions of the deed under which he holds them, they cannot, so long as he holds them, be let at a rack-rent. Whether in the case of premises which were prevented by an Act of Parliament from being let at a rack-rent, there ever could be an owner within the meaning of the section I very much doubt. I am inclined to think that if the incapacity to be let were stamped upon the premises, they never could have an owner within the meaning of the section."

In *G. E. Rail. Co.* v. *Hackney District Board of Works* (1883), 8 App. Cas. 687; 48 J. P. 52, a street was carried over a railway cutting by a bridge, the parapets of which consisted of two walls resting upon arches, which had their foundations outside the lines of the roadway in the company's land. The walls were not used otherwise than as fences for the bridge. It was held that the company were not liable for paving expenses as owners of land abutting on the street. "The bridge is, by the statute, dedicated to public use, and its fence walls are provided for public protection; and if the ownership and control of the walls is in the company, it is so for public purposes; and subject to the obligation of perpetual maintenance, unless and until some other good and sufficient fences shall be provided by the company in their stead for the public protection. The company could not let the walls at a rack-rent; and if they might use them for any purpose, it must be a use subordinate to the public purposes to which the bridge, as a structure, is in its whole devoted." This case was distinguished in *Williams* v. *Wandsworth District Board of Works* (1884), 13 Q. B. D. 211; 48 J. P. 439. There the appellant was held to be chargeable as owner of a strip of land, four inches wide and 265 feet in length, upon which he had erected a boundary fence in pursuance of a covenant made with the adjoining owner (his vendor) to erect and for ever maintain a fence thereon. *Cf. Elsdon* v. *Hampstead Corporation*, [1905] 2 Ch. 633; 69 J. P. 434; and *Hampstead Borough Council* v. *Western* (1907), 71 J. P. 565. By a special Act it was provided that for the protection of the owners of certain land taken for sidings, a railway company should leave a strip of land twenty feet wide along the whole length of a certain road, and at their own expense plant and maintain trees thereon to the satisfaction of the owners, and fence it off from the road. The company left the strip of land accordingly, and planted and fenced it off. The court held that as the burden on the strip of land was imposed for the benefit of individuals who might release it, the land was not incapable for ever of being let at a rack-rent, and that therefore the company were the "owners" thereof, and were liable to contribute towards the expenses of paving the road (*Hampstead Corporation* v. *Midland Rail. Co.*, [1905] 1 K. B. 538; 69 J. P. 133).

Commons.

In *Re Christchurch Inclosure Act*, *Meyrick* v. *Att.-Gen.*, [1894] 3 Ch. 209; 58 J. P. 556, the lord of a manor was held liable for paving expenses as owner of a common, which was originally waste of the manor, and was afterwards by an Inclosure Act allotted to the lord, subject to the turbary rights of certain cottages: it was assumed that the Act prevented him from letting it.

Bed and banks of navigable rivers.

The Thames Conservators were a public body in whom were vested by statute the bed of the river and its shores within the flux and reflux of the tides. The Acts regulating their duties gave them various powers for the improvement of the navigation, but gave them no power of scavenging or removing nuisances; their

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power of raising funds, and the application of the funds when raised, were strictly limited, and did not include a power to raise money for the sanitary improvement of the river. It was held that under their statutes they were owners of the soil and foreshore for certain specified purposes only, and were not owners thereof so as to be liable to abate a nuisance thereon under the P. H. (London) A., 1891 (*Thames Conservators* v. *Port of London Sanitary Authority*, [1894] 1 Q. B. 647; 58 J. P. 335). The Lee Conservancy Board, incorporated for the purpose of improving the navigation of the Lee, owned a strip of land about twenty-six feet wide, which had been acquired by their predecessors for the purpose of strengthening the river bank. By various statutes the board were empowered—*inter alia*—to construct locks, docks, wharves, etc.; to sell, or otherwise dispose of any lands vested in them which were not required for their statutory purposes, and to charge tolls; but they were not empowered to make a profit. It was provided that the payment of expenses incident to all powers and duties under the Acts should be considered as among the purposes for which income received under those Acts was by law applicable. It would be possible for the board, if they chose to substitute a retaining wall, to dispose of a portion of the land which would then be no longer required. The Court of Appeal held that the nature of the undertaking of the board, and the conditions under which it was carried on, did not place the land in question *extra commercium*, or make it incapable of being let at a rack-rent, and that therefore the board were "owners" thereof within the meaning of the Metropolis Management Acts, and liable to contribute to the expenses of making up a new street upon which the land abutted (*Hackney Borough Council* v. *Lee Conservancy Board*, [1904] 2 K. B. 541; 68 J. P. 485).

Cemetery.

The respondents were a cemetery company incorporated by Act of Parliament whereby it was provided that part of the cemetery should be set apart for the interment of the dead according to the rites of the Church of England, and might be consecrated for that purpose, and when so consecrated should for ever thereafter be set apart and applied exclusively for the uses of Christian burial. Under their Act the company had power to sell the exclusive right of burial in vaults in perpetuity or for a limited period, but were prohibited from selling or disposing of any land which had been consecrated or set apart or used for the burial of the dead. It was held that as the company were owners in fee of the land with the power of letting or selling the land for the purposes of interment, and as, moreover, there was nothing to prevent them from letting it or part of it to another cemetery company at a rack-rent so long as it was used as a cemetery, they were liable as owners to contribute towards the expenses of paving a road which bounded the consecrated part of the cemetery (*St. Giles, Camberwell, Vestry* v. *London Cemetery Co.*, [1894] 1 Q. B. 699; 58 J. P. 382).

Schools.

A trustee of a National School was held to be an "owner" thereof (*Bowditch* v. *Wakefield L. B.* (1871), L. R. 6 Q. B. 567; 36 J. P. 197). Under the School Sites Act, 1841, s. 6, a piece of land was conveyed in the form given in s. 10 to trustees for ever for purposes of the Act, as a site for a National School "and for no other purpose whatever"; and the school was erected. In proceedings against the trustees to recover paving expenses under s. 150, apportioned upon them in respect of the school, it was held that as under the School Sites Act the premises might in certain events be sold or exchanged, or might be transferred to a School Board at a rent under the Education Acts, the premises were not so incapacitated from ever being let at a rack-rent as to prevent the trustees from being liable as owners (*Hornsey U. D. C.* v. *Smith*, [1897] 1 Ch. 843). A site granted under s. 2 of the Act of 1841 is subject to a reverter clause in favour of the grantor. See *Att.-Gen.* v. *Shadwell*, [1910] 1 Ch. 92.

Recreation grounds.

Under a scheme made pursuant to the Metropolitan Commons Act, 1866, and confirmed by the Metropolitan Commons Supplemental Act, 1873, Tooting Bec Common was vested in the Metropolitan Board of Works (predecessors of the London C. C.) for the use of the public. The scheme provided that the common should be regulated and managed by the Board, and that no houses or buildings should be erected upon it except such lodges or buildings as might be necessary for its management and maintenance. There was a lodge on the common occupied by an inspector employed by the council, a deduction being made from his wages in respect of his

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occupation. There was a refreshment house on the common let to a contractor at a rental of £30 a year, and rights of grazing were also let for about £20 a year. The expenditure in respect of the common always exceeded the receipts therefrom. The Court of Appeal held (overruling *Fulham Vestry* v. *Minter, infra*), that the County Council were not "owners" within the meaning of the Metropolis Management Acts (*London C. C.* v. *Wandsworth Borough Council*, [1903] 1 K. B. 797; 67 J. P. 215). In *Fulham Vestry* v. *Minter*, [1901] 1 K. B. 501; 65 J. P. 180, a Divisional Court had held that an open space acquired by a local authority, under the Open Spaces Acts, 1877 and 1881, by deed which provided that the land should be maintained for the perpetual use thereof by the public for exercise and recreation, might nevertheless not be land incapable of becoming a source of profit, and that therefore the authority might be persons who would receive the rent of the land if the same were let at a rack-rent, and so be "owners" within the definition.

With the Tooting Bec Common case, *supra*, may be usefully contrasted *St. Mary, Islington, Vestry* v. *Cobbett*, [1895] 1 Q. B. 369; 58 J. P. 716. The vestry had in pursuance of the Metropolitan Open Spaces Act, 1881, s. 5, acquired by assignment of a lease the residue of a term of twenty-six years in the centre portion of a square, used as a pleasure ground by the occupiers of houses in the square. The assignment contained covenants by the vestry that the land should be used for the purposes of a public garden or open space, and, on failure so to use it, to re-assign. It was held that the vestry was the "owner" within the meaning of the Metropolis Management Acts.

A Divisional Court has held that a pleasure ground owned by an urban district council was not land *extra commercium*. The land had been bought under the P. H. A., 1875, for a public pleasure ground, and under the covenants in the conveyance the council were bound to keep it open as a recreation and pleasure ground for the use of the public for ever (*Herne Bay U. D. C.* v. *Payne and Wood*, [1907] 2 K. B. 130; 71 J. P. 282).

Rent collectors.

Upon a similar definition in a local Act, it was held that an agent employed to collect the rents of property charged with an apportionment of paving expenses was an owner, and liable as such to be called upon to pay, whether he had money of his principal in hand or not, at any time while the sum assessed upon the premises remained unpaid (*St. Helen's Corporation* v. *Kirkham* (1885), 16 Q. B. D. 403; 50 J. P. 647). See also *Metropolitan Water Board* v. *Brooks*, in note to s. 72 of the Waterworks Clauses Act, 1847, *post*. In *Broadbent* v. *Shepherd* (1900), 65 J. P. 70, it was held that a mere rent collector may be served as owner, under s. 94, *post*, p. 176, with a notice to abate a nuisance, although such nuisance arises from structural defects. And he may be ordered under s. 96, *post*, p. 182, to abate it even though he has resigned his post after notice to abate (*Broadbent* v. *Shepherd* (No. 2), [1901] 2 K. B. 274; 65 J. P. 499). In *Cook* v. *Montague*, p. 8, *ante*, BLACKBURN, J., said: "The object of the legislature seems to have been this, that as the occupier was often poor, and the real owner might be difficult to discover, it was as well to get at the collector of rents, who could always be found out; and hence the person who receives the rack-rent from the occupier is deemed the owner." An agent or rent collector is not, however, an "owner" for the purposes of the Representation of the People Act, 1867, s. 7, which contains no definition of the term (*Nokes* v. *Strong*, [1909] 2 K. B. 625; 73 J. P. 417). The above definition of "owner" does not include a receiver appointed by the court (*Bacup Corporation* v. *Smith* (1890), 44 Ch. D. 395). See also *Hackett* v. *Smith*, [1917] 2 I. R. 508.

Receivers.

Mortgagees and trustees.

A second mortgagee took possession and collected the rents, which he applied in paying his outgoings and interest on the first mortgage; these exhausted all the receipts. It was held that he was liable as "owner" for paving expenses (*Tottenham L. B.* v. *Williamson* (1893), 62 L. J. Q. B. 322; 57 J. P. 614). When a mortgagee has taken possession, he is, and the mortgagor is no longer, the "owner" (*Maguire* v. *Leigh-on-Sea U. D. C.* (1906), 70 J. P. 479). Trustees in receipt of rents are "owners," though not beneficially interested (*In re Barney, Harrison* v. *Barney*, [1894] 3 Ch. 562; and see *In re Lever, Cordwell* v. *Lever*, [1897] 1 Ch. 32).

Executors.

In *Glossop Corporation* v. *Cooper* (1913), 136 L. T. Jo. 90, a county court judge held that executors (of an executor) succeeding to an unsaleable and unlettable

plot of land were not liable as "owners" thereof *de bonis propriis* for paving expenses under s. 150, *post*, p. 286. **Note to Section 4.**

As to the "ownership" of land devised for a long term on trust to pay debts, etc., see *Mansell* v. *Norton* (1883), 22 Ch. D. 769.

"Rack-rent"; "full net annual value."

"Rack-rent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises (*a*); and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (*b*):

(*a*) See the Poor Law Amendment Act, 1834, s. 109.

(*b*) This definition is taken from the Parochial Assessments Act, 1836, s. 1, and is what is set out in the column of the rate in the schedule headed *rateable value*. As to the meaning of the words "free from all usual tenant's rates and taxes," etc., see Ryde on Rating, 4th ed., pp. 208—211, and *Hackett* v. *Long Bennington Overseers* (1864), 16 C. B. (N.S.) 38; *R.* v. *Hall Dare* (1864), 34 L. J. M. C. 17. In the latter, SHEE, J., explained the words "free from," as being equivalent to "without regard to," or "putting aside." This definition is probably best explained in the words of the Valuation (Metropolis) Act, 1869, s. 4, which declares that "'gross value' means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent." "'Rateable value' means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid." From this it will be seen that the "net annual value" in the definition is the same as the "rateable value" as defined in the Act of 1869.

"Tenant's rates and taxes" means those which are borne by the occupier as distinguished from the owner of land, and include poor, highway, watering, watching, police, borough, general district rates; but not land tax or property tax, which are landlord's rates or taxes. See Ryde on Rating, 4th ed., pp. 208—211, as to these rates and taxes and the mode of estimating them.

The following recent cases bearing upon this subject might also be referred to: *Waddle* v. *Sunderland Union*, [1908] 1 K. B. 642; 72 J. P. 99; *Green* v. *Newport Union*; *Stead* v. *Newport Union*, [1909] A. C. 35; 73 J. P. 17; *White* v. *South Stoneham Union*, [1915] 1 K. B. 103; 79 J. P. 79; *Re Sawyer and Withall*, [1919] 2 Ch. 333; 35 T. L. R. 611; *Port of London Authority* v. *Orsett Union*, [1920] A. C. 273; 84 J. P. 69.

As to evidence that a rent paid is a "rack-rent," see *Wareham and Dale, Limited* v. *Fyffe*, p. 9, *ante*.

"Street."

"Street" (*a*) includes any highway [*not being a turnpike road*] (*b*), and any public bridge (not being a county bridge) (*c*), and any road lane footway square court alley or passage whether a thoroughfare or not (*d*):

(*a*) See as to the word "include," p. 6, note (*b*), *ante*.

Meaning differs in different sections:

In *Robinson* v. *Barton Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276, Lord SELBORNE said: "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word, as used in the Act, when there is

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nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more nor less than this: that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous); and by *new street*, a place which before had not that character, but which, by the construction of buildings on each side, or possibly on one side, has acquired it." From this it will appear that the definition in the text does not invariably govern the meaning of the word *street* throughout the Act, and it is important to distinguish the various meanings which have been assigned to the term in different sections. See also p. 3, *ante*.

in s. 16:

In *Taylor* v. *Oldham Corporation* (1876), 4 Ch. D. 395, JESSEL, M.R., held that the word *street*, as used in s. 16, included private streets and roads; in fact, that the word must be interpreted according to the extended meaning assigned to it by the above definition. This decision was followed with approval in *Hill* v. *Wallasey L. B.*, [1894] 1 Ch. 133. The same meaning must evidently be given to the word as used in s. 32.

in s. 26:

In s. 26 the word *street* is used to mean the roadway as distinguished from the roadway with the houses, and it is probably used in the sense assigned to it by the above definition. The same remark applies to ss. 42, 57, 72, and 126.

in s. 149:

It has been expressly decided that *street* in s. 149 includes a country lane of which the herbage may be let. It is, therefore, used in its extended sense as here defined (*Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104; 43 J. P. 268). And see to the same effect, *Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375; 43 J. P. 635, decided on the corresponding section of 11 & 12 Vict. c. 63. In *Robinson* v. *Barton Eccles L. B.*, *supra*, Lord SELBORNE said: "In s. 149 of this Act, and the sections which follow it, the word *street* manifestly has the same sense as when we speak of a man going out of his house into the street, or carriages passing along the street. There the public highway, whether footway or carriage-way, is alone intended, and the houses on either side are certainly not included in that case in the street. And I should be inclined myself to say that this would primâ facie be the sense of the word *street* when it is used in a context which contains no indication of anything more."

in s. 150

Section 150 is the complement of s. 149, and it would seem that the word "street" as therein used has the same meaning. That the word means the roadway as distinguished from the road with the houses is clear, and the dictum of Lord SELBORNE, already quoted, applies to s. 150 as well as to s. 149. The cases have not consistently decided whether the word is used in its natural and ordinary sense of a roadway with houses on both sides, or in the wider meaning assigned to it by the definition. *Maude* v. *Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644, apparently decided that the word "street" is used in s. 150 in its natural sense as distinguished from its extended meaning. But in *Portsmouth Corporation* v. *Smith* (1883), 13 Q. B. D. 184; 48 J. P. 404, the Master of the Rolls questioned that decision, pointing out that it had proceeded upon a mistaken view in *R.* v. *Dayman*, *infra*. And the court decided that the word "street" as used in s. 53 of the Towns Improvement Clauses Act, 1847 (which corresponds to s. 150 of this Act), had to be interpreted according to the definition, and, therefore, included a highway which was not a street in the ordinary sense. And in the case of *Midland Rail. Co.* v. *Walton* (1886), 17 Q. B. D. 30; 50 J. P. 405, the court assumed that in s. 150 the word "street" was used as here defined But all doubt on the subject is now removed by the decision of the Court of Appeal in *Jowett* v. *Idle L. B.* (1888), 57 L. T. 928; 36 W. R. 34; followed in *Richards* v. *Kessick* (1888), 57 L. J. M. C. 48; 52 J. P. 756; *Fenwick* v. *Croydon R. S. A.*, [1891] 2 Q. B. 216; 55 J. P. 470, and *Walthamstow U. D. C.* v. *Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835. These cases decide that the word "street," as used in s. 150, means a street as above defined, and not merely a street

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in the ordinary sense. Where a local Act provided that every new street should be laid out at least thirty-six feet wide, a new road, eighteen feet wide, which had been sanctioned in the expectation that the adjoining owner would widen it to the full width, was held to be a street within the meaning of a section corresponding to s. 150 (*West Hartlepool Corporation* v. *Robinson* (1897), 62 J. P. 35; 77 L. T. 387). A path in Epping Forest was held to be a street which, with the consent of the Epping Forest Conservators, might be made up under the Private Street Works Act, 1892 (*Woodford U. D. C.* v. *Henwood* (1899), 64 J. P. 148). As to roadways belonging to railway companies, see cases in the note (*b*) to s. 150, *post*, p. 288.

A "street" may be formed by adding, and dedicating to the public, a longitudinal strip of land alongside a highway. See *Richards* v. *Kessick*, *supra*; *White* v. *Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; *Property Exchange, Limited* v. *Wandsworth Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435; *Portsmouth Corporation* v. *Hall* (1907), 71 J. P. 299; 97 L. T. 43; reversed on appeal on another point, 71 J. P. 564; 98 L. T. 513).

in s. 156:

The word *street* in s. 156 is used in its ordinary sense, viz., a road with houses on each side. This was so held upon the corresponding words of 24 & 25 Vict. c. 61, s. 28 (*R.* v. *Fullford* (1864), 33 L. J. M. C. 122; 28 J. P. 357). And see *Thomas* v. *Roberts* (1878), 43 J. P. 574; and *R.* v. *Platts* (1880), 49 L. J. Q. B. 848; 44 J. P. 765, decided with reference to s. 66 of the Towns Improvement Clauses Act, 1847. But s. 156 has been repealed by 51 & 52 Vict. c. 52, *post*, and in that Act the word "street" would appear to have the meaning assigned to it by the above definition. See s. 2 of that Act, but see also note (*c*) under *ibid.*, s. 3.

in s. 157.

The word *street* in s. 157 is used with reference to *new streets*. The section confers power to make byelaws with respect to the level, width and construction of *new streets*, and the doubt which has arisen as to whether the expression is to be interpreted according to its ordinary meaning or as above defined has given rise to some confusion. In *Baker* v. *Portsmouth Corporation* (1878), 3 Ex. D. 1, 157; 42 J. P. 278, the court were of opinion that the power to make byelaws with respect to the construction of streets included a power to regulate by a byelaw the construction of buildings by the side of a street, *e.g.*, to provide that no such building should be erected until the street had been constructed to the authority's approval; and this view was approved by the House of Lords in *Robinson* v. *Barton Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276. It must not be assumed, however, as a result of these cases that the power to make "new street" byelaws is limited to new "streets" in the ordinary and popular sense of that term, *i.e.*, to new "ways" which have, or are intended in the immediate future to have, houses erected by the side or sides thereof; and it has been held that such byelaws apply to anything which is a street within the definition clause in this section and which is proposed to be laid out and constructed for the first time, *e.g.*, a narrow path giving access to cottages at the far end, but not at present intended to have houses built by its side (*Att.-Gen.* v. *Gibb*, [1909] 2 Ch. 264; 73 J. P. 343). See also *R.* v. *Goole L. B.*, [1891] 2 Q. B. 212; 55 J. P. 535, where it was held that the byelaws as to the width of new streets applied to passages proposed to be laid out at the back of rows of new houses.

"Old street" or "new street."

Although it has been held in many cases that an old highway may become for certain purposes a new street by the mere erection of houses on one or both sides of it, whereby it becomes for the first time a street in the ordinary or popular sense (see, for example, *Pound* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; *Dryden* v. *Putney Overseers* (1876), 1 Ex. D. 223; 40 J. P. 263; *Robinson* v. *Barton Eccles L. B.*, *supra*; *Att.-Gen.* v. *Rufford*, [1899] 1 Ch. 537; 63 J. P. 232; *Clerkenwell Vestry* v. *Edmondson*, [1902] 1 K. B. 336; 66 J. P. 324), yet the mere erection of houses does not amount to the *laying out* of such old highway as a new street within the meaning of the byelaws, for the laying out of a street involves some physical interference with or something done on the highway itself. Accordingly, it has been held that the mere erection of houses by the side of an old highway does not make it incumbent on the person building such houses to widen the highway to the width prescribed by the byelaws for the laying out of new streets. See *Devonport Corporation* v. *Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; *Att.-Gen.* v. *Gibb*, *supra*; *Att.-Gen.* v. *Dorin*, [1912] 1 Ch. 369; 76 J. P. 181. These cases remove much of the practical difficulty which had been felt as to the precise point of time at which an old highway

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became a new street so as to involve an obligation to widen it. Much of the confusion existing on this subject arose from the cases decided under the Metropolis Management Acts, for under those statutes the liability of frontagers to pay paving expenses depends upon whether a way, new or old, has become a new street by the erection of buildings in it to such an extent as to give it for the first time the character of a street in the ordinary sense, and this was of course a question of fact in every case. The following metropolitan cases on this subject may be referred to: *R.* v. *Dayman* (1857), 7 E. & B. 672; *R.* v. *Islington Vestry* (1858), E. B. & E. 743; *R.* v. *Fullford* (1864), 33 L. J. M. C. 122; 28 J. P. 357; *Dodd* v. *St. Pancras Vestry* (1869), 34 J. P. 517; *North London Rail. Co.* v. *Islington Vestry* (1872), 37 J. P. 341; *Islington Vestry* v. *Barrett* (1874), L. R. 9 Q. B. 278; 38 J. P. 198; *Bowles* v. *Islington Vestry* (1875), 39 J. P. 757; *R.* v. *Shiel* (1884), 49 J. P. 68; 50 L. T. 590; *Wilson* v. *Camberwell Vestry*, [1892] 1 Q. B. 1; 56 J. P. 167; *Camberwell Vestry* v. *Crystal Palace Co.*, [1892] 2 Q. B. 33; 57 J. P. 5; *Davis* v. *Greenwich Board of Works*, [1895] 2 Q. B. 219; 59 J. P. 517; *White* v. *Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; *Battersea Vestry* v. *Palmer* (1896), 66 L. J. Q. B. 77; 60 J. P. 774; *Arter* v. *Hammersmith Vestry*, [1897] 1 Q. B. 646; 61 J. P. 279; *Crosse* v. *Wandsworth Vestry* (1898), 62 J. P. 807; 79 L. T. 351; *Allen* v. *Fulham Vestry*, [1899] 1 Q. B. 681; 63 J. P. 212; *Simmonds* v. *Fulham Vestry*, [1900] 2 Q. B. 188; 64 J. P. 548; *Property Exchange, Ltd.* v. *Wandsworth Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435.

In addition to the metropolitan cases above mentioned there are other cases which have arisen outside the metropolis and decide that it is a question of fact whether a place has become a "new street." See, for example, *Robinson* v. *Barton Eccles L. B.*, *supra*; *Fellowes* v. *Sedgley U. D. C.* (1906), 70 J. P. 412; 4 L. G. R. 970; *Greenwood* v. *Queensbury U. D. C.* (1906), 3 Architects L. R. 145; *Att.-Gen.* v. *Dorin*, *supra*. But, of course, the question of fact can only arise after it has been determined in what sense the word "street" has been used in the particular section under consideration. See *Eccles* v. *Wirral R. S. A.* (1886), 17 Q. B. D. 107; 50 J. P. 596. And it is to be observed that the court will always inquire whether there has been *any* evidence to justify the finding of justices on the facts. See *Williams* v. *Powning* (1883), 47 J. P. 486; 48 L. T. 672; *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405.

In *Tarrant* v. *Woking U. D. C.*, [1914] 3 K. B. 796; 79 J. P. 22, a street had been constructed in three portions in 1905, in 1910, and 1911 respectively and in conformance with byelaws stipulating the widths of the carriageway and footway. The whole when completed formed one road and terminated at each end in a public highway, and this caused it to be used as a short cut for traffic. To prevent this, in 1913, the owner at the request of the residents erected piers and gates, thus reducing the clear widths in the portion completed in 1905, whereupon the respondents obtained a conviction for infringement of the byelaws regulating widths of carriageway and footway. It was held that the conviction was wrong, that when once the construction of a new street has been completed no offence is committed by a subsequent diminution of the width below the required minimum.

Extent of a street.

Whether a piece of ground by the side of a street forms part of it or not is a question of fact (*Bell* v. *Great Crosby U. D. C.* (1913), 77 J. P. 37; *Le Neve* v. *Mile End Old Town Vestry*, *infra*).

"Street" in incorporated enactments.

The word *street* as used in the statutes incorporated by the P. H. A., 1875, must in general be interpreted with reference to the definition of the term contained in those Acts respectively (*per* Lord BLACKBURN, in *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364; 49 J. P. 676. And see *Curtis* v. *Embery* (1872), L. R. 7 Ex. 369; *Maddock* v. *Wallasey L. B.* (1886), 55 L. J. Q. B. 267; 50 J. P. 404; *Att.-Gen.* v. *Rufford*, *supra*). In *Maddock* v. *Wallasey L. B.*, the definition of a street in the Gasworks Clauses Act, 1847, was held not to include an open tract of land above mean high water mark which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants had been accustomed to pass and repass along this shore, and at high tide had been in the habit of going upon the tract of land in question, but had not crossed in any defined track. The shore itself is not a highway and presumably not a street. See *Llandudno U. D. C.* v. *Woods*, [1899] 2 Ch. 705; 63 J. P. 775.

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"Street" in metropolitan statutes.

Newman v. *Baker* (1860), 8 C. B. (N.S.) 200, decided upon the Metropolitan Building Act, 1855, may be referred to, but it throws little, if any, light on the construction of the text. *Metropolitan Board of Works* v. *Nathan* (1885), 50 J. P. 502; 54 L. T. 423, decided with reference to the same Act, shows that there may be a place with houses on both sides, which is, nevertheless, not laid out as a street within the meaning of that Act. In that case artizans' dwellings had been erected opening into an approach 100 feet long and sixteen feet wide, entered from a public street through a gateway ten feet wide, over which one of the buildings was carried. A roadway had previously existed on the site, with warehouses abutting thereon, and the gateway included the site of a former gateway which had been pulled down and altered to a greater width. The approach did not afford communication with any other public street, and was for the sole use and convenience of the tenants of the dwelling, to the exclusion of the public, no right of way having ever been dedicated to the public. It was held that the approach had not been laid out "as a street for foot traffic only." See also *Daw* v. *London C. C.* (1890), 59 L. J. M. C. 112; 54 J. P. 502; *London C. C.* v. *Davis* (1895), 64 L. J. M. C. 212; 59 J. P. 583. All these decisions were considered, and *Wood* v. *London C. C.* (1895), 64 L. J. M. C. 276; 59 J. P. 615, was overruled, in *Armstrong* v. *London C. C.*, [1900] 1 Q. B. 416; 64 J. P. 197. In that case the appellant commenced to erect buildings on a piece of land belonging to him. According to the plan the buildings were to consist of blocks of flats erected in a quadrangle form with an ornamental garden in the centre of the quadrangle formed by the blocks. The approach was to be by means of a carriageway running round the garden. Upon each side of the carriageway blocks were to be erected. Each of the blocks was to have a separate entrance from the carriageway. The appellant did not propose to dedicate any public right of way over the land to the use of the public, but intended to erect gates at the entrance to the approach, and to keep a porter there to open the gates when necessary to allow persons going to and from the flats to pass, and the carriageway was to be for the use of the tenants of the flats and of persons visiting them. It was held that the appellant had commenced to lay out or form a *street* within the meaning of the similar definition in the London Building Act, 1894. The decision in *Armstrong* v. *London C. C.*, *supra*, was followed and applied in *London C. C.* v. *Davis* (1904), 68 J. P. 520; 91 L. T. 555.

The word *street* as used in the Metropolis Management Acts is defined in words identical with those in the text. For a case in which the term was interpreted with reference to the definition, see *Hampstead Vestry* v. *Hoopel* (1885), 15 Q. B. D. 652; 49 J. P. 741; and see *Hampstead Vestry* v. *Cotton* (1886), 12 App. Cas. 1; 51 J. P. 340.

A space of ground from thirty-three to fifty-eight feet wide between the footway and the carriageway, which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such user to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be part of a street, having been only partially dedicated to the public (*Le Neve* v. *Mile End Old Town Vestry* (1858), 22 J. P. 657; 8 El. & Bl. 1054).

Turnpikes.

(*b*) The words "not being a turnpike road" were repealed by the S. L. R. A., 1898, turnpikes being obsolete.

Bridges.

(*c*) See *Arnell* v. *Regent's Canal Co.* (1852—1854), 12 C. B. 697; 14 C. B. 564, as to how far a canal bridge was brought within the terms of a local paving Act. When a street passes over a canal by a bridge, the bridge may, for some purposes, be deemed to be a street (*per* WIGHTMAN, J., in *Beaver* v. *Manchester Corporation* (1857), 26 L. J. Q. B. 311). When a street is carried over a railway by means of a bridge, it is only the street, and not the bridge itself, which vests in the local authority under s. 149 (*G. E. Rail. Co.* v. *Hackney District Board of Works* (*per* Lord WATSON) (1883), 8 App. Cas. 687; 48 J. P. 52).

A county bridge is one the duty of repairing which is cast by law on the inhabitants of the county at large. This duty extends to every public bridge erected before 1803, unless it is transferred to some persons or person or corporation by custom, prescription, or tenure of land. See hereon *Att.-Gen.* v. *West Riding C. C.* (1903), 67 J. P. 173. Bridges built since 1803 are not repairable by the county unless they have been erected in compliance with 43 Geo. 3, c. 59, s. 5, or have been declared to be so repairable pursuant to 41 & 42 Vict. c. 77, s. 21.

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Culs-de-sac.

(*d*) A *cul-de-sac* may be a street and public highway (*Souch* v. *East London Rail. Co.* (1873), L. R. 16 Eq. 108; 37 J. P. 644; *Kingston-upon-Hull Corporation* v. *North Eastern Rail. Co.*, [1916] 1 Ch. 31; 84 L. J. Ch. 905). In a Scotch case, where by a local Act it was forbidden to lay out a new street which would terminate in a *cul-de-sac*, it was held that a street of sixty feet which was continued by a lane twenty feet wide was not a *cul-de-sac* (*Stevenson* v. *Lee* (1910), S. C. 14). In *Att.-Gen.* v. *Antrobus*, [1905] 2 Ch. 188; 69 J. P. 141, FARWELL, J., said that in no case has mere user by the public been held sufficient to constitute a dedication to the public of a *cul-de-sac*, and this dictum was cited with approval by KEKEWICH, J., in *Whitehouse* v. *Hugh*, [1906] 1 Ch. 253; affirmed, [1906] 2 Ch. 283. And see also *Vine* v. *Wenham* (1915), 79 J. P. 423, and *Att.-Gen.* v. *Sewell* (1919), 83 J. P. 92; 120 L. T. 363, which had reference to an alleged *cul-de-sac* used as a promenade and formed by the earth filling behind a sea wall erected for the prevention of coast erosion. For further reference to courts which are *culs-de-sac*, see *Att.-Gen.* v. *Richmond Corporation* (1903), 68 J. P. 73; 89 L. T. 700; *Att.-Gen.* v. *Chandos Land and Building Society* (1910), 74 J. P. 401; *Josselsohn* v. *Weiler* (1911), 75 J. P. 513; *London C. C.* v. *Hughes* (1911), 75 J. P. 239; 104 L. T. 685. So also a highway, one end of which has been legally stopped, may still be a highway (*R.* v. *Burney* (1875), 39 J. P. 599). But a way ceases to be a public highway when access to it at both ends has become impossible by reason of the legal stopping up of ways leading to it (*Bailey* v. *Jamieson* (1876), 1 C. P. D. 329; 40 J. P. 486; *G. C. Rail. Co.* v. *Balby-with-Hexthorpe U. D. C.*, [1912] 2 Ch. 110; 76 J. P. 205). A ferry might constitute a connecting link between two *culs-de-sac* so as to convert same into a through highway, see *Hammerton* v. *Dysart* (*Earl*), [1916] 1 A. C. 57; 78 J. P. 297.

Dedication.

A leaseholder cannot dedicate land to the use of the public without the consent of the owner of the fee. Nor can land be dedicated to the use of the public for a term of years (*Corsellis* v. *London C. C.*, [1907] 1 Ch. 704; 71 J. P. 219). On appeal the consideration of this point did not become material ([1908] 1 Ch. 13; 71 J. P. 561. And see *R.* v. *Wicklow C. C.*, [1908] 2 I. R., at p. 116). Where user by the public is the only evidence of dedication, knowledge on the part of the owner must be proved, but such knowledge may be inferred from the circumstances of the case (*Webb* v. *Baldwin* (1911), 75 J. P. 564). Thus in *Folkestone Corporation* v. *Brockman*, [1914], A. C. 338, *per* Lord ATKINSON: "Proof of long, continuous and uninterrupted user of a way by the public, though it is evidence from which dedication may be inferred, does not create a *præsumptio juris* in favour of dedication which, unless rebutted, must prevail." See also *Vine* v. *Wenham*, *supra*; *Att.-Gen.* v. *Sewell*, *supra*, and *Hull Corporation* v. *N. E. Rail.*, *supra*. See as to dedication where land is in settlement, *Farquhar* v. *Newbury R. D. C.*, [1909] 1 Ch. 12; 73 J. P. 1. And as to dedication by statutory bodies, such as canal and railway companies, see the cases cited in the notes to s. 148, *post*, p. 272.

"The Act expressly calls places *streets* whether they are public property or private property, and whether the public have any rights over them or have no rights over them" (*per* JESSEL, M.R., in *Taylor* v. *Oldham Corporation* (1876), 4 Ch. D., at p. 407). And see *Midland Rail. Co.* v. *Watton*, *supra*; *Hill* v. *Wallasey L. B.*, cited in notes to s. 57; *Armstrong* v. *London C. C.*, *supra*.

"House."

"House" includes schools, also factories and other buildings in which *more than twenty* persons are employed *at one time*:

The words in italics were repealed by 41 & 42 Vict. c. 16, s. 107, Sched. 6. How far this term is extended to any house remains for judicial decision. It is not to be read into s. 42 of this Act (*post*, p. 107), and therefore a steam laundry, although containing a dwelling-house for the manageress and for the clerk in charge, is not a "house" for the purpose of the removal of "house refuse," under that section (*per* CHARLES, J., in *London and Provincial Laundry Co.* v. *Willesden L. B.*, [1892] 2 Q. B. 271; 56 J. P. 696).

"House" generally.

There is no definition of a "house" here, but only an extension of the term. Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law, for illustration of the word "house." Primâ facie a house means a dwelling-house (*Surman* v. *Darley* (1845),

14 M. & W. 181); or a building calculated to be used as such (*Nunn* v. *Denton* (1845), 8 Scott N. R. 794; *Daniel* v. *Coulsting*, *ib.* 949); but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed. It has recently been decided that it is a question of fact whether particular premises are a "house" within s. 62 of this Act. See *Wootten* v. *Bishop* (1907), 71 J. P. 334; 96 L. T. 705. In *Brighton Aerodrome, Ltd.* v. *Dell*, [1917] 2 K. B. 380, it was held that, under a Sea Defence Order, aeroplane hangars were "houses" within the meaning of the Order. **Note to Section 4.**

Buildings used as places of business, in which no one slept, and which were originally occupied as dwelling-houses and had been converted into business premises, and which were capable, with slight internal alterations, of being fitted for use as dwelling-houses, were held to be "houses" within the meaning of a local Act (*Lewin* v. *End*, [1906] A. C. 299; 70 J. P. 268; see also *Lewin* v. *Newnes* (1904), 68 J. P. 164; 90 L. T. 160). Business premises.

A day school where there were no boarders and where none of the members of the staff resided, and in which only two maidservants dwelt, was held to be a house within s. 91 (5) of this Act (*Wimbledon U. D. C.* v. *Hastings* (1902), 67 J. P. 45; 87 L. T. 118). Day school.

A *church* was held not to be a house in *Angell* v. *Paddington Vestry* (1868), L. R. 3 Q. B. 714; 32 J. P. 742. But this case had reference to the section of the Metropolis Management Act, 1862, which renders the owner of a house liable for the expenses of paving, etc. A church may be a house within the meaning of a byelaw or order prescribing a building line (*per* MALINS, V.-C., in *Folkestone Corporation* v. *Woodward* (1872), L. R. 15 Eq. 159). A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts (*Caiger* v. *St. Mary, Islington Vestry* (1881), 50 L. J. M. C. 59; 45 J. P. 570). The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses. This decision was followed in *Wright* v. *Ingle* (1885), 16 Q. B. D. 379; 50 J. P. 436. There it was held that the word "house" includes every building which is capable of being used as a human habitation. If a building, which is physically capable of being so used, is prevented, either by common law or by statute, from ever being put to such a use, it is exempted from the liability to contribute to the expense of paving a street in the metropolis. Thus, a consecrated church of the Established Church of England, is exempted, because, by reason of its consecration, it becomes, by the common law, for ever incapable of being used as a habitation for man. But a leasehold chapel, vested in trustees, in trust to permit it to be used as a place of religious worship for Wesleyans, is a house, because, by the consent of the landlord, the trustees, and the *cestuis que trustent*, the trust may at any moment be put an end to. And see the note to the definition of the expression "owner," *ante*, p. 10. Churches and chapels.

The word "house" under the P. H. A., 1848, was held to apply to a toll-house on a turnpike road (*Tunstall Turnpike Roads* (*Trustees of*) v. *Lowndes* (1856), 20 J. P. 374). Toll-house.

In *Hole* v. *Commissioners of Milton* (1867), 31 J. P. 804, it was held that buildings and yards used for purposes of business did not come within the description of "house" (for the purposes of a rate made under a local Improvement Act), unless they were also within the curtilage of the house; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word "house." Therefore, a mill which opened into a yard adjoining a house, and which had internal communication with the outbuilding and house, was held to be part of the house and properly included in the rates. Whether "house" includes yard, garden or curtilage.

A publichouse was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house only by a narrow foot pavement also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the publichouse since 1802; it was used by customers of the publichouse, and it furnished the only means of approach for vehicles to the front of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the

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meaning of the Lands Clauses Act, 1845, s. 92 (*Marson* v. *L. C. & D. Rail. Co.* (1868), L. R. 6 Eq. 101 ; 32 J. P. 565 ; following *Lord Robert Grosvenor* v. *Hampstead Junction Rail. Co.* (1857), 1 De G. & J. 446). See also, as to the meaning of the word "curtilage," *Asquith* v. *Griffin* (1884), 48 J. P. 724 ; *Pilbrow* v. *St. Leonard's, Shoreditch* (*Vestry of*), [1895] 1 Q. B. 433 ; 59 J. P. 68 ; *St. Martin's* (*Vestry of*) v. *Bird*, [1895] 1 Q. B. 428 ; 60 J. P. 52 ; *Harris* v. *Scurfield* (1904), 68 J. P. 516 ; and *Brass* v. *London C. C.*, [1904] 2 K. B. 336.

In *Wright* v. *Wallasey L. B.* (1887), 18 Q. B. D. 783 ; 52 J. P. 4, it was held that the word "house" in s. 10 of the Cemeteries Clauses Act, 1847, did not include the curtilage.

In *R.* v. *Warwickshire JJ.* (1851), 17 L. T. (o.s.) 183, a coach-house and stables adjoining, and occupied with a dwelling-house, and forming part of the same premises, were held to be part of the "house" within the meaning of a local Paving Act.

"Dwelling-house."

As to what constitutes a "dwelling-house," see *Lawson* v. *Fraser* (1881), 8 L. R. Ir. 55, where premises used as a corn store and kiln, part of which had formerly been used as a dwelling-place, and in which the respondent occasionally slept, were held to be a dwelling-house. A public building in the nature of an hotel for poor men (Rowton House) was held not to be a "dwelling-house to be inhabited, or adapted to be inhabited, by persons of the working class" (*London C. C.* v. *Davis* (1897), 62 J. P. 68). See also *Chester Waterworks Co.* v. *Chester Union* (1908), 72 J. P. 121, where upon the construction of a local Waterworks Act and the Waterworks Clauses Acts, a workhouse was held to be a dwelling-house, and *Bristol Guardians* v. *Bristol Waterworks Co.*, [1914] A. C. 379 ; 78 J. P. 217, where a similar building was held not to be a "*private* dwelling-house." The term "dwelling-house" within the meaning of the Housing (Additional Powers) Act, 1919, was considered in *Davison* v. *Birmingham, etc. Society* (1921), 90 L. J. K. B. 206 ; 85 J. P. 73.

"Building" generally.

"Building" is a word of wider signification than "house" (see *per* TURNER, L.J., in *Grosvenor* v. *Hampstead Junction Rail. Co.*, *supra*).

Element of permanency.

In *Stevens* v. *Gourlay* (1859), 7 C. B. (N.S.) 99, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry, and capable of being lifted from the ground, was held to be a *building* within 18 & 19 Vict. c. 122. In *Poplar Board of Works* v. *Knight* (1858), El. B. & E. 408, it was held that a house simply built on the surface of the ground, without any foundations in the ordinary sense, was nevertheless a building within 18 & 19 Vict. c. 120, s. 204, which prohibited the erection of *buildings* over sewers. In *Morish* v. *Harris* (1865), L. R. 1 C. P. 155, a structure built of stone, having four walls and a door, which was used by the tenant for keeping guano and other manures, which he used on adjoining land, was held to be a building within the Reform Act, 1832, s. 27 ; but the term, as used in that Act, does not include everything which can be called a building ; "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building" (*per* ERLE, C.J., in *Powell* v. *Boraston* (1865), 29 J. P. 550 ; 18 C. B. (N.S.) 175). In *Watson* v. *Cotton* (1847), 5 C. B. 51, decided with reference to the same Act, a shed described as standing against a wooden paling, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpaulin, which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building.

Wooden and open buildings.

In *R.* v. *Gregory* (1833), 3 L. J. M. C. 25, an open shop roofed in, connecting the shop front with a newly-built house, was held to be a building within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway.

An erection made of wood, thirty feet long and thirteen feet wide, was brought along the streets on wheels and put at the corner of a new street. It had spouts with a fall-pipe, and a supply of gas, and was used as a butcher's shop :—*Held*, that it was a new building (*Richardson* v. *Brown* (1885), 49 J. P. 661).

A structure may be a new building under this Act, and at the same time a

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temporary building under P. H. A. (Amendment Act), 1907, s. 27 (4), see *post* (*Andrews* v. *Wirral R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257).

Conservatories.

In *Bowes* v. *Low* (1870), L. R. 9 Eq. 636, a vinery attached to a wall was held to be a building. But a conservatory, 15 feet long by 9 feet deep, constructed of wood and glass without any heating apparatus and built against the side of a house, was held not to be a building within the meaning of a byelaw requiring buildings to be erected of stone, brick, etc. (*Hibbert* v. *Acton L. B.* (1889), 5 T. L. R. 274). A greenhouse is a building within the meaning of the Prescription Act, 1832 (*Clifford* v. *Holt*, [1899] 1 Ch. 698; 63 J. P. 22). See also the cases cited under the Public Health (Building in Streets) Act, 1888, s. 3.

Walls.

Whether a high wall is a building, *quære*. It was considered by Lord HATHERLEY, in *Child* v. *Douglas* (1854), 5 De G. M. & G. 739, that a dwarf wall forming a fence was not (see *Weston* v. *Arnold* (1873), L. R. 8 Ch. 1084, in reference to a party-wall). A local Act prohibited the erection of all houses "and every other building whatever," within 30 feet of the centre of a road:—*Held*, by the Court of Session in Scotland (Lord YOUNG, *diss.*) that this prohibition did not apply to a parapet wall 1 foot in height surrounded by a railing 5 feet 3 inches in height (*Partick* (*Commissioners of*) v. *Great Western Steam Laundry* (1886), 13 Ct. of Sess. Cas. (4th series) 500). As to whether fence walls of a canal being erected in a public place constituted a *public building*, see *Arnell* v. *Regent's Canal Co.* (1852—1854), 12 C. B. 697; 14 C. B. 564; see also *Att.-Gen. and Great Yarmouth Port and Haven Commissioners* v. *Harrison* (1921), 85 J. P. 54; 18 L. G. R. 740, where it was held under a private Act prohibiting buildings or erections within a defined space, that an ordinary timber boundary fence was not an erection under the Act. In *Ellis* v. *Plumstead Board of Works* (1893), 57 J. P. 359; 68 L. T. 291, it was held that a wall, 9 inches thick and 7 feet 8 inches high above the level of the ground, and 14 inches thick below that level and 20 feet long, was a building, structure, or erection within s. 75 of the Metropolis Management Act, 1862, not being merely required as a boundary wall or fence. But the question depends on the height of the wall and the purpose for which it is built. The forecourt of a house in a street had for many years been bounded on the side nearest the street by a dwarf wall between 2 and 3 feet high. The owner pulled down the dwarf wall and built on its site a wall 11 feet high, which was used as a screen to exhibit advertisements, and also to serve as a boundary to the forecourt. It was held that the dwarf wall was not, but that the substituted wall was a "building, structure, or erection" within the meaning of the same section (*Lavy* v. *London C. C.*, [1895] 2 Q. B. 577; 59 J. P. 630). In *Morrison* v. *Commissioners of Inland Revenue*, [1915] 1 K. B. 716; 112 L. T. 1044, it was held that substantially built stone walls, 5 to 6 feet high, bounding and dividing up farm lands and serving as shelter to farm stock were not "buildings" or "structures" within the Finance Act, 1909–10.

Platforms.

Movable seating consisting of tiers of platforms capable of accommodating about three thousand persons erected from time to time as required for exhibitions in the Agricultural Hall, was held not to be a "building structure or work" within s. 145 of the London Building Act, 1894 (*Venner* v. *McDonnell*, [1897] 1 Q. B. 421; 61 J. P. 181; followed in *Handover* v. *Meeson* (1903), 67 J. P. 313).

Hoardings.

The erection of hoardings for advertisements was held to be a breach of a covenant not to erect or make any building or erection on certain demised premises (*Pocock* v. *Gilham* (1883), 1 C. & E. 104). But see *Foster* v. *Fraser*, [1893] 3 Ch. 158; 57 J. P. 646). In *Wood* v. *Cooper*, [1894] 3 Ch. 671, the erection of a substantial trellis-work screen, intended to be permanent, was held to be a breach of a similar covenant. An advertising company surrounded on three of its sides a piece of ground with boarded walls or hoardings raised to a height of from 13 to 19 feet. These hoardings were stayed, fastened and tied together and strengthened on the inner side. The space enclosed was used for the preparation of wood for other hoardings. It was held that the structure was not a new building within the byelaws (*Slaughter* v. *Sunderland Corporation* (1891), 60 L. J. M. C. 91; 55 J. P. 519). In *Boyce* v. *Paddington Borough Council*, [1903] 1 Ch. 109; 67 J. P. 23, BUCKLEY, J., held that a screen proposed to be put up upon a disused churchyard managed as an open space, for the purpose of preventing an adjoining landowner from acquiring by prescription a right to access of light to windows of his houses overlooking the churchyard, would not be a building within s. 5 of the Metropolitan Open Spaces Act 1881, and s. 3

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of the Disused Burial Grounds Act, 1884. The Court of Appeal reversed this decision (see [1903] 2 Ch. 557; 68 J. P. 49) on the ground that in erecting the screen the council would be holding and administering the ground otherwise than for the purpose of its enjoyment by the public in an open condition and for no other purpose, as prescribed by s. 5 of the Metropolitan Open Spaces Act, 1881. The House of Lords reversed the decision of the Court of Appeal and restored that of BUCKLEY, J. (*Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41).

Temporary structures.

Three caravans, a shooting gallery and steam roundabout were held not to be "structures or erections of a movable or temporary character" within 45 Vict. c. 14, s. 13 (*Hall* v. *Smallpiece* (1890), 59 L. J. M. C. 97; 54 J. P. 710). So, also, a builder's pay office constructed of wood and roofed with zinc and placed upon iron wheels for the purpose of enabling it to be wheeled about to any place where building operations were being carried on (*London C. C.* v. *Pearce*, [1892] 2 Q. B. 109; 56 J. P. 790); and a bungalow constructed of wood and corrugated iron and erected on a piece of land for the purpose only of exhibition and sale and not for occupation (*London C. C.* v. *Humphreys*, [1894] 2 Q. B. 755; 58 J. P. 734). Temporary structures, intended for storing workmen's tools, and for the purpose of a brick kiln, were held not to be buildings within the meaning of byelaws of a local board (*Fielding* v. *Rhyl Improvement Commissioners* (1878), 3 C. P. D. 272; 42 J. P. 311). So also a wooden weighing machine house open for the use of the public during the summer months erected on an esplanade at the seaside as a shelter for a weighing machine, and containing also a table and two chairs, was held not to be a new building within the meaning of byelaws under s. 157, *post*, p. 327, and a movable wooden refreshment stall open during the summer months in the same locality was likewise held not to be a new building (*Southend-on-Sea Corporation* v. *Archer*; *Same* v. *Romanis* (1901), 70 L. J. K. B. 328; 65 J. P. 292; and see *Dublin Corporation* v. *Irish Church Missions*, [1901] 2 I. R. 387; *Dublin Corporation* v. *Allen* (1904), 38 Ir. L. T. 78). Again, a portable theatre, constructed of wood, and erected for a short period only, where the intention of the proprietor was to move to another locality within a short time, was held not to be a "building" within the meaning of the P. H. A., 1875, s. 157, or of byelaws framed in pursuance of that section (*Newell* v. *Ormskirk U. D. C.* (1907), 71 J. P. 119). See also as to "temporary buildings," s. 27 of the P. H. A., 1907, *post*.

Bay windows.

A covenant in a purchase deed provided that buildings should not be erected beyond a given line of frontage. It was held that bay windows projecting beyond the line, and carried from the foundation up to the roof, were buildings within the meaning of the covenant (*Lord Manners* v. *Johnson* (1875), 1 Ch. D. 673).

Subterranean buildings.

The word *building* is not restricted to erections above the surface of a street. Thus, arches over which a roadway was made, and which were used as storehouses, were held to be buildings within s. 7 of the Gasworks Clauses Act, 1847 (*Thompson* v. *Sunderland Gas Co.* (1877), 2 Ex. D. 429; 42 J. P. 198; and see *Schweder* v. *Worthing Gas Co.* (1911), 76 J. P. 3; 105 L. T. 670; *Schweder* v. *Worthing Gas Co.* (No. 2), [1913] 1 Ch. 118). So also street boxes for electric lighting purposes and reservoirs have been held to be buildings, structures or works within s. 145 of the London Building Act, 1894 (*Whitechapel District Board of Works* v. *Crow* (1901), 65 J. P. 549; 84 L. T. 595; *Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe* (1903), 67 J. P. 286; 88 L. T. 772; *County of London Electric Supply Co., Ltd.* v. *Perkins* (1908), 72 J. P. 133; 98 L. T. 870; *Moran* v. *Marsland*, [1909] 1 K. B. 744; 73 J. P. 114).

"New building."

As to what is a "new building," see the notes to ss. 157, 159, *post*, pp. 327, 361.

"Addition to" a building.

Where a bedroom had been erected in place of a conservatory, the external wall of the house having been raised for the purpose, and the justices upon a summons for making an "addition to an existing building" without complying with certain byelaws, held that there was no addition to an existing building on the ground that the bedroom occupied no more space than the conservatory did, the court sent back the case to the justices, holding that this fact was not, *per se*, conclusive (*Meadows* v. *Taylor* (1890), 24 Q. B. D. 717; 54 J. P. 757).

"Drain."

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely

for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed : Section 4.

As to the effect of the word " means," see *ante*, pp. 6, 8.

There may be instances of drains not comprehended within this definition as where there is a direct communication from a house to a river or canal or the sea.

In *Coulton* v. *Ambler* (1844), 13 M. & W. 403, a navigable river or cut was held not to be a " public or parish drain " within the meaning of a local drainage Act. The word *drain* in the Lands Drainage Act, 1847, was held to include an underground drain (*Bowes* v. *Watson* (1879), 44 J. P. 364 ; 42 L. T. 27). A dumb well, *i.e.*, one into which waste water flows through a pipe and thence percolates into the soil, was held not to be a " drain or watercourse " within s. 67 of the Highway Act, 1835 (*Croft* v. *Rickmansworth Highway Board* (1888), 39 Ch. D. 272). And see *Croysdale* v. *Sunbury-on-Thames U. D. C.*, [1898] 2 Ch. 515 ; 62 J. P. 520. A pipe, running through a bank which divided the defendant's land from a highway, which from a time beyond living memory had been maintained there by a highway authority, and through which water which accumulated upon the highway flowed on the defendant's land, was held to be a " drain " within the meaning of s. 67 of the Highway Act, 1835, notwithstanding the fact that there was no defined channel into which the water coming through such pipe flowed (*Att.-Gen.* v. *Copeland*, [1902] 1 K. B. 690 ; 66 J. P. 420 ; followed in *King's County C. C.* v. *Kennedy* [1910] 2 I. R. 544). " Drain " generally.

The effect of this and the next definition is, roughly, that a drain is that which receives the drainage of one house, while a sewer is that which receives the drainage of two or more. But the word used in the text is " building " ; and where a pipe serves two or more houses, it must, therefore, be considered whether the houses do in point of fact constitute more than one building. Thus two semi-detached houses may constitute one building only (*Hedley* v. *Webb*, [1901] 2 Ch. 126 ; 65 J. P. 425 ; see, however, *Harvie* v. *South Devon Rail. Co.* (1874), 32 L. T. 1), but it is in every case a question of fact whether they are, or are not, one building so as to make the pipe draining them a " drain." The court can lay down no general rule upon the point (*Humphery* v. *Young*, [1903] 1 K. B. 44 ; 67 J. P. 34). But in districts where the P. H. A., 1890, is in force when two or more houses belonging to different owners are connected with a public sewer by a single private drain, such drain may for certain purposes be treated as a drain and not as a sewer. See s. 19 of that Act, *post*. See also *Kingston-upon-Hull Corporation* v. *N. E. Rail. Co.*, [1915] 1 Ch. 456, where under a local Act it was held that a conduit draining from a number of houses was a single private drain under the Act. " One building "

The drainage of the Lowther Arcade (a passage with a gate at each end, arched over by one roof and containing a range of twenty-five houses and shops) was effected by a construction running down the centre of the passage, and receiving the drainage of all these houses and shops. It was held that the construction was not a drain but a sewer, and that the Arcade was not one building nor premises within the same curtilage (*St. Martin's-in-the-Fields* (*Vestry of*) v. *Bird* (1894), 71 L. T. 432 ; affirmed, [1895] 1 Q. B. 428 ; 60 J. P. 52). Buildings consisting of forty-six sets of apartments divided into two blocks, which were separated by a causeway 20 feet wide, were erected without any plans being submitted to the local authority. The drainage was by means of twelve branch drains running from each set of apartments into a main drain under the causeway, which communicated with a sewer within 100 feet of the blocks. The causeway opened into a public thoroughfare, and access to one of the blocks was obtained from the causeway and to the other only from the thoroughfare. It was held by MATHEW and CHARLES, JJ., that the two blocks of buildings were premises within the same curtilage, and that the main drain was a drain and not a sewer, and repairable by the owner of the buildings (*Pilbrow* v. *Shoreditch Vestry*, [1895] 1 Q. B. 33 ; affirmed (RIGBY, L.J., *diss.*), [1895] 1 Q. B. 433 ; 59 J. P. 68). The decision in *St. Martin's-in-the-Fields* (*Vestry of*) v. *Bird*, *supra*, was followed, and the *Shoreditch Case* distinguished in a Premises " within the same curtilage."

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case where the circumstances were as follows: The appellants were the owners of eighteen dwelling-houses, Nos. 7 to 25 in No. 1 Court, Eyre Lane, Sheffield. The said houses were back-to-back houses, and Nos. 7 to 13 thereof formed part of a block, and Nos. 14 to 25 thereof were in one block; the said Nos. 7 to 13 faced the said Nos. 14 to 19, and between them was an open space of ground with a pavement on either side. Nos. 20 to 25 faced the boundary wall on the south-east side of the court, and between them and the said boundary wall was also an open space of ground with a pavement on the side thereof. The main entrance to the court was from a partially enclosed space of ground, to which an entrance was obtained from one of the main thoroughfares, and the court could also be entered by means of two narrow passages made between certain of the houses, Nos. 7 to 13. There were situate in this court two ashpits and thirteen water-closets for the use of the tenants. The slop water from the sink of each house was carried by a separate channel cut in the pavement at right angles to each house into a long channel at the side of the pavement in the court. By means of these channels the drainage was carried into two gullies in the court, and thence into the main sewer outside of the court. The court held that the eighteen dwelling-houses were not premises within the same curtilage (see *Harris* v. *Scurfield* (1904), 68 J. P. 516; 91 L. T. 536). In the course of his judgment in the last-mentioned case, ALVERSTONE, L.C.J., said: "There is no definition of a curtilage which would include the case of a number of houses separately occupied by different people, simply because there is a common access and to some extent common accommodation." See also *Brass* v. *London C. C.*, [1904] 2 K. B. 336; 68 J. P. 365, and cases cited therewith, on p. 22, *ante*.

"Sewer."

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act.

As to the word "includes," see *ante*, p. 6.

Excepted highway drains.

As to the words in this definition which except from it certain highway drains, see *Williamson* v. *Durham R. D. C.*, *Rickarby* v. *New Forest R. D. C.*, and cases cited therewith, on pp. 30, 31, *post*.

"Sewers" generally.

"The word 'drain' as used in the Public Health Act evidently means a passage for sewage from a single house only which may afterwards fall into a cesspool or larger sewer. The word 'sewer' comes from the word to 'sew,' *i.e.*, to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, etc. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality. But it does not comprise a cesspool for the purpose of retaining the sewage whether as a simple deposit or to be converted into manure or other useful purposes": *per* KINDERSLEY, V.-C., in *Sutton* v. *Norwich Corporation* (1858), 27 L. J. Ch. 739. See further as to cesspools, p. 28, *post*.

Semble, a "sewer" presupposes an effective outfall.

It would seem that a line of pipes cannot be a sewer for the purposes of this Act if it has no effective outfall, *e.g.*, if it ends in a cesspool with no proper outlet, or a blind ditch, which does not convey away the contents of the pipes, but merely leaves them to soak into the earth around. See *Meader* v. *West Cowes L. B.*, and cases cited therewith, on p. 28, *post*.

"Streams" becoming "sewers."

An ancient tidal fleet or haven upon which barges floated at high tide, was held not to be a sewer, although it became offensive and injurious to health by reason of the houses in a town discharging sewage into it (*Pentney* v. *Lynn Commissioners* (1865), 12 L. T. 818).

A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three houses in its passage to the river into which it flowed, was held not to be a sewer (*R.* v. *Godmanchester L. B.* (1866), L. R. 1 Q. B. 328; 30 J. P. 164). This case may be compared with a later one where the sewage

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of certain houses drained into a sewer, and, after passing through the sewer was, for a number of years, allowed to fall into an open watercourse which, in its turn, flowed into a brook: it was held that under the circumstances of the case the open watercourse was a sewer (*Wheatcroft* v. *Matlock L. B.* (1885), 52 L. T. 356). And a natural watercourse into which for many years a large number of houses had drained, was held to be a sewer in *Falconar* v. *South Shields Corporation* (1895), 11 T. L. R. 223. In *Newcastle-upon-Tyne Corporation* v. *Houseman* (1898), 63 J. P. 85, a tidal stream largely polluted by sewage was held to be a sewer: BYRNE, J., said: "I think it is possible to form a sewer without the construction of any artificial work. If, for instance, an old ditch or the bed of a watercourse from which all flow of water has been diverted is utilised for the carriage of sewage matter, such utilisation would be properly described as forming a sewer. I think a sewer may be formed within the meaning of the section either by artificial construction or by the utilisation of natural channels. It is a question of degree, and I should think that none would dispute that, if a body of sewage a hundred times as great as the natural flow of water in a stream were discharged into the channel continuously, a sewer would be formed." In *West Riding of Yorkshire Rivers Board* v. *Reuben Gaunt & Sons, Ltd.* (1903), 67 J. P. 183; 19 T. L. R. 140, the court held that a natural stream, or watercourse, may cease to be a stream, and may become a sewer, into which persons may acquire certain rights of drainage as against the local authority, and that it may do so even although the natural flow of water along its bed has not wholly ceased. But the court further held that the mere fact that for a number of years sewage has been discharged into a watercourse is not of itself sufficient to convert the watercourse into a sewer; nor is the fact that the watercourse has been covered over material, unless it was done by the local authority in order to turn it into a sewer. The court further held that after the year 1861 a local authority could not convert a watercourse into a sewer merely by the illegal act of discharging sewage into it. The last-mentioned case was discussed and *Falconar* v. *South Shields Corporation, supra,* distinguished in *West Riding of Yorkshire Rivers Board* v. *Preston & Sons* (1905), 69 J. P. 1; 92 L. T. 24, where the facts were as follows: The defendants sent polluting liquids from their factory into a channel. This channel originally carried water from a well above the factory, but the defendants diverted this water supply above their factory, took it into their mill, and discharged it in a polluted state into the channel close to their factory. The channel ran from the factory past certain cottages; then joining a stream, fell with the stream into a river. Fifty or sixty cottages emptied their sewage into the channel below the factory until 1892, when a sewage scheme was put into operation for the district. Two cottages still discharged slop water into the channel, and two or three small watercourses fell into it below the factory. A county court judge held that the channel was a "stream" within the meaning of the Rivers Pollution Prevention Act, 1876, s. 20, and that the defendants had committed an offence under *ibid.*, s. 4. On appeal the Divisional Court held that a stream within the meaning of the Act may be either a natural or an artificial one; and that the court was not prepared to differ from the conclusion of the county court judge that the channel was a stream, since (apart from the existing watercourses below) pure water would still flow along the course but for the acts of the defendants. In an earlier case a county court judge, in proceedings taken under Part 3 of the Rivers Pollution Prevention Act, 1876, found that the brook in question was a stream within the meaning of *ibid.*, s. 20; but he did not expressly find that it was not a "sewer" within the meaning of this Act, and it was objected that his decision was for that reason ambiguous; but the Divisional Court held that the question was in fact raised before the judge, and was in terms decided by him (*West Riding of Yorkshire Rivers Board* v. *Yorkshire Indigo, Scarlet and Colour Dyers, Limited* (1903), 67 J. P. 80). In a Scotch case, it was held that an open stream which flowed through a borough, and was polluted by sewage from outside the borough, but into which no part of the borough sewage was discharged, was not a sewer (*Glasgow, Yoker and Clyde Bank Rail. Co.* v. *Macindoe* (1896), 24 R. 160).

A bourne flow or intermittent stream issuing from the chalk, was held not to be a sewer in *Pearce* v. *Croydon R. D. C.* (1910), 74 J. P. 431; 8 L. G. R. 909. But the discharge of sewage into the channel of such a stream may convert it into a sewer (*Att.-Gen.* v. *Lewes Corporation,* [1911] 2 Ch. 495; 76 J. P. 1). A natural

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underground watercourse which ran through the lands and grounds of adjoining owners in a culvert or piping constructed by the owners of the several lands, was held not to be a sewer in *Shepherd* v. *Croft*, [1911] 1 Ch. 521.

Effluent or overflow pipes.

An iron pipe temporarily laid down to carry away the effluent water from sewage works is a sewer (*Tottenham L. B.* v. *Button* (1886), 2 T. L. R. 828); *à fortiori* a permanent line of pipes for the purpose (*Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board*, *Titterton* v. *Kingsbury Collieries*, *Limited*, p. 29, *post*). Whether an "overflow" sewer is a sewer for all purposes within the meaning of the Act, *quære*. See *Leeds and District Worsted Dyers and Finishers' Association, Limited* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480.

Point of commencement of a "sewer."

A drain running underneath three houses received the drainage, first of one, and then of the other two houses, which it conveyed into a sewer (*Travis* v. *Uttley*, [1894] 1 Q. B. 233; 58 J. P. 85). WILLS, J., said: "It is impossible to say that the part which is used for the drainage of one building is a drain, and the rest a sewer. The drain is a sewer from end to end." But in a subsequent case he recalled this opinion (*Beckenham U. D. C.* v. *Wood* (1896), 60 J. P. 490). In that case, it was decided that a pipe or line of pipes receiving the drainage of more than one building, not being premises within the same curtilage, although a sewer from below the point where it receives the drainage of more than one building, is a drain and not a sewer above that point. Where a drain of a house ran through the adjoining premises, and a sink and water gully in the latter drained into the pipe, it was held that the pipe from the point of junction was a sewer (*Duncan* v. *Fulham* (*Vestry of*), Times, February 11th, 1899).

A "sewer" may exist before any drains connected to it.

In *Acton L. B.* v. *Batten* (1884), 28 Ch. D. 283; 49 J. P. 357, KAY, J., held that a line of pipes laid in a street for the use of all houses requiring to be connected with it was a sewer, at any rate as soon as two houses had been so connected. In *Beckenham U. D. C.* v. *Wood*, *supra*, CAVE, J., said: "The general rule, as I understand, is that where a drain receives the sewage of two or more houses, it is a sewer. Where it receives the sewage of one house only, it may still remain a drain, though not necessarily, because it may be a sewer, whether it takes the sewage of one house only, or no house at all. A main sewer may be laid down by the local authority in a new street where no houses are built, but where it is intended houses shall be built. Subsequently the buildings may be commenced at the lower end of the street, and when the drains of one house are connected with the main sewer, the connecting pipes will be drains, and not sewers. But the sewer itself will no less continue to be a sewer although it receives only the drainage of that one house, and consequently a sewer without a drain at all will be a sewer." This dictum of CAVE, J., was followed by NEVILLE, J., in *Turner* v. *Handsworth U. D. C.*, [1909] 1 Ch. 381; 73 J. P. 95. It was there held that where a landowner gives notice of his intention to make a new street with a sewer under it and his plans are passed and carried out, the pipes become a sewer before they are in fact used.

A cesspool not part of a sewer,

A builder drained a number of houses by one common pipe into a cesspool. The cesspool overflowed, and justices made an order on the owner of one of the houses to abate the resulting nuisance. A Divisional Court reversed this decision, holding that the authority must deal with the matter. It was apparently admitted without argument that the line of pipes was a sewer; and the court seem to have held either that, this being so, the owners had no further responsibility for liquid turned into it, or that the cesspool was part of the sewer (*Pinnock* v. *Waterworth* (1887), 51 J. P. 248). It had, however, been said in an earlier case that the definition of a sewer does not include a cesspool, reservoir, or deposit bed for collecting sewage for purposes of disposing of it (*Sutton* v. *Norwich* (*Mayor, etc. of*), p. 26, *ante*). A plaintiff built some houses having a drain leading into a line of six-inch pipes. The line of pipes was intersected by a pit or cesspool, and from thence the pipes passed under the land of a neighbouring owner. The owner cut off the pipes, causing the sewage to flow back and cause a nuisance. The defendants required the plaintiff to abate the nuisance by cleansing the cesspool, and the plaintiff thereupon commenced an action for an injunction to restrain the defendants from causing a nuisance, contending that the cesspool was part of the sewer, and vested in them under s. 13, *post*, p. 45. It was held that the action could not be maintained, as the cesspool was not part of the sewer (*Meader* v. *West Cowes L. B.*, [1892] 3 Ch. 18). There are

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observations in the judgments in this case suggesting that the line of pipes leading to the cesspool was not a sewer, and if the court intended so to decide, the decision cannot be reconciled with *Pinnock* v. *Waterworth, supra.* *Meader* v. *West Cowes L. B.* was followed, however, in *Button* v. *Tottenham U. D. C.* (1898), 62 J. P. 423. In that case, the owner of certain houses constructed a series of cesspools for their drainage on his own land. He then constructed a conduit which conveyed the overflows therefrom to a larger cesspool. He was summoned for constructing the small cesspools so as to have an outlet into a sewer, namely, the conduit and the large cesspool, contrary to local byelaws. It was held that the conduit to the large cesspool did not constitute a sewer. It was again followed in *Butt* v. *Snow* (1903), 67 J. P. 454; 89 L. T. 302, and in *Pakenham* v. *Ticehurst R. D. C.*, p. 31, *post*, where BUCKLEY, J., said: "A sewer within this Act of Parliament I conceive must be in some form a line of flow by which sewage or water of some kind, such as would be conveyed through a sewer, should be taken from a point to a point and then discharged. It must have a terminus *a quo* and a terminus *ad quem*." *Cf.* also *Croft* v. *Rickmansworth Highway Board*, and cases cited therewith, on p. 25, *ante*. In *Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192, where it was held that the local authority were not responsible for the pollution of a stream by the overflow from private sewage works, it was nevertheless held that the line of pipes leading from such works was a sewer; and this decision was followed in *Titterton* v. *Kingsbury Collieries, Ltd.* (1911), 75 J. P. 295; 104 L. T. 569. But see *Rochford R. D. C.* v. *Port of London Authority*, on p. 69, *post*.

nor, *semble*, the pipe running into a cesspool;

A cesspool may, by the construction of a sewer leading out of it, become a mere "catchpit," and so part of the whole sewer. See *Pakenham* v. *Ticehurst R. D. C.*, *supra*.

a catchpit may be part of a sewer;

It has been held that a manhole forming a side entrance to a sewer formed part of the sewer, as being necessary to a sewer properly made, and was not a work auxiliary to the use of the sewer (*Swanston* v. *Twickenham L. B.* (1879), 11 Ch. D. 838). But it has been held that an engine-house with pump and machinery, erected partly above and partly below the ground, for forcing sewage along a rising main to a common outfall for treatment was not a sewer within the meaning of s. 16, *post*, p. 55, but a work for the purpose of "receiving or otherwise disposing of sewage" within s. 27 (*King's College, Cambridge* v. *Uxbridge R. D. C.*, [1901] 2 Ch. 768).

a manhole part of a sewer,

but not a pumping station.

A marsh wall or embankment keeping back the river Thames from inundating the Isle of Dogs at high water and through which sewers pass draining the island at low water, was held to be a "sewer" within the meaning of 18 & 19 Vict. c. 120, s. 204, which prohibits building over a sewer: *per* Lord CAMPBELL, C.J., "Sewer, in its common sense, may mean the whole apparatus, and in its specific sense, a drain, as part of the apparatus" (*Poplar District Board of Works* v. *Knight* (1858), 22 J. P. 401; El. B. & E. 408).

Marsh wall as part of "a sewer."

It will be noticed that a pipe need not necessarily convey sewage matter in order to constitute it a sewer. It would be none the less a sewer within the Act if it conveyed only rain or surface water. The draining of rain or surface water collected from different premises by different feeders into one main drain would constitute that main drain a sewer within the meaning of the Act (*per* SMITH, L.J., in *Ferrand* v. *Hallas Land and Building Co.*, [1893] 2 Q. B. 135, 144; 57 J. P. 692). In a later case it was held that a drain was within the definition of a drain although it only carried off rain water from the roof of a house (*Holland* v. *Lazarus* (1897), 66 L. J. Q. B. 285; 61 J. P. 262). The decision in *Holland* v. *Lazarus, supra*, was approved by the Court of Appeal in *Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829; 67 J. P. 273, where it was held that a pipe carrying away sewage and rain water from one house, and rain water only from another, and not constructed as a combined operation under the order of a local authority, was a "sewer" and not a "drain." The last-mentioned case was decided upon the definition of "sewer" in the Metropolis Management Act, 1855, but the decision is equally applicable to cases under this Act. The facts were peculiar and should be referred to, for they led CHANNELL, J., to observe upon the case (in *Heaver* v. *Fulham Borough Council*, *post*, p. 32, and *Kershaw* v. *Paine* (1914), 78 J. P. 149). The plaintiff was the owner of two adjoining houses (A. and B.). An underground pipe or drain carried sewage

A "sewer" need not convey sewage.

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from A. into the main sewer. A gutter ran along under the eaves at the back of both houses, by which rain water falling on their roofs was carried into a pipe passing down the wall of house A. This fall pipe discharged by means of a gully into the above-mentioned underground pipe or drain. From house B. only rain water was carried by this drain. This drain was held to be a sewer. CHANNELL, J., assumed that the Court of Appeal on those facts had held the fall pipe to be a sewer, and said that the court never intended to decide that proposition; that all that the court really decided was that the decision in *Holland* v. *Lazarus*, *supra*, was right; and that in *Holland* v. *Lazarus*, *supra*, the only point argued and decided was as to whether a pipe carrying off rain water only, as distinct from sewage in the ordinary meaning of the word, was a drain in the sense that the unauthorised connection of a drain, into which flowed rain water from a fall pipe, with the drain of another house converted the latter into a sewer. *Silles* v. *Fulham Borough Council*, *supra*, was followed in *Kershaw* v. *Paine*, *supra*.

Land and agricultural drains as "sewers."

Where a railway company constructed land drains for the purpose of conveying surface water from lands adjoining the railway, and these land drains were, without the knowledge or consent of the company, used by a sanitary authority to convey sewage from certain houses within the district of such authority, it was held that the drains were sewers, although, by reason of their coming within one of the exceptions in s. 13, *post*, p. 45, they did not vest in the local authority (*L. & N. W. Rail. Co.* v. *Runcorn R. D. C.*, [1898] 1 Ch. 561; 62 J. P. 643). A line of pipes laid down by the owner of a field adjoining a highway from a ditch bordering the highway to a disused gravel pit in the field for the purpose of supplying water to the cattle feeding in the field, was held to be a sewer, although by reason of its being made for profit within the meaning of s. 13, *post*, p. 45, it did not vest in the district council (*Croysdale* v. *Sunbury-on-Thames U. D. C.*, [1898] 2 Ch. 515; 62 J. P. 520).

A drain was made by the owner of a quarry for the purpose of collecting and carrying off surface water coming on to his land, and preventing it from running over the quarry. By means of the drain the quarry could be more economically and conveniently worked than if the water were allowed to spread over it. It was held that the drain was a sewer, although, being one made for profit within the meaning of s. 13, it did not vest in the district council. It was argued that, if such a drain were a sewer within the meaning of the Act, it would follow that every drain made for agricultural purposes for the drainage of land would also come within the Act, and would vest in and be repairable by the council. But the court said that mere agricultural drains were excluded from the Act as being made "for profit" (*Sykes* v. *Sowerby U. D. C.*, [1900] 1 Q. B. 584; 64 J. P. 340). See also as to such drains, *Phillimore* v. *Watford R. D. C.*, on p. 47, *post*.

Highway drains and gutters as "sewers."

Several houses and a slaughter-house belonging to B. drained into a road drain which ran into a ditch in B.'s field and there caused a nuisance which the local board called upon B. to abate. It was apparently admitted that the road drain was a sewer, and B. contended that the field ditch was a sewer and vested in the board who must cleanse it. The justices refused to make an order, as B. was not the person by whose act or default the nuisance arose, and it was held that they were right (*Kirkheaton L. B.* v. *Beaumont* (1888), 52 J. P. 68). Pipes laid for conveying surface water from roads into a natural stream were held to be sewers in *Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291. And see *Dell* v. *Chesham U. D. C.*, [1921] 3 K. B. 427; 85 J. P. 186. A drain constructed by the side of a highway to receive the surface water of the highway, which emptied into an open ditch, was held to be a sewer within the meaning of the definition, though it was not a sewer for all purposes so as to entitle the owners of houses adjoining the highway to connect their drains with it (*Kinson Pottery Co., Limited* v. *Poole Corporation*, [1899] 2 Q. B. 41; 63 J. P. 580). As to the latter point, see notes to s. 21, *post*, p. 78. A channel or gutter at the side of a road which drained the surface water from the roadway, and into which rain-water pipes from the roofs and curtilages of adjoining houses drained, was held to be a "sewer" (*Wilkinson* v. *Llandaff and Dinas Powis R. D. C.*, [1903] 2 Ch. 695; 68 J. P. 1). In *Williamson* v. *Durham R. D. C.*, [1906] 2 K. B. 65; 70 J. P. 352, it was held that a pipe (originally put in to take surface water from a road), which in 1894 was vested in or under the control of a highway board, and was consequently not then a sewer within the meaning of s. 4, did not

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upon the passing of the L. G. A., 1894, become a sewer by reason of its becoming vested under s. 25 of that Act in a district council. The report of the case in the L. R. appears to be somewhat imperfect, but on a reference to the report in the Justice of the Peace, it will be seen that the pipe had for many years received sewage and surface water from various premises. The decision in the last-mentioned case was followed by another Divisional Court, and attention was called by PHILLIMORE, J., to the fact that in *Wilkinson* v. *Llandaff and Dinas Powis R. D. C.*, *supra*, the point on which the decision in *Williamson* v. *Durham*, *supra*, was decided was not called to the attention of the court (*Irving* v. *Carlisle R. D. C.* (1907), 71 J. P. 212). In *Wincanton R. D. C.* v. *Parsons*, [1905] 2 K. B. 34; 69 J. P. 242, it was held that a pipe which had been laid down alongside a highway by an adjoining owner for the purpose of carrying away from his premises surface water from the highway, and into which pipe the defendant had for some years discharged the sewage from his house, but which had not been repaired by the plaintiffs or treated by them as a sewer, was not a sewer, although it also took surface water from the highway. See further as to this case, p. 51, *post*, and *Fordom* v. *Parsons* and *Molloy* v. *Gray*, there cited.

By the L. G. A., 1888, s. 11 (6), all drains "belonging to" a main road not retained by an urban authority vest in the county council. In 1875 a drain was under the control of a highway board, and did not vest under this Act in the then local authority; in 1888, as a drain belonging to a main road, it became vested in the county council. It was held that it had not become divested and vested in the rural council by the fact of a house drain being connected to it without the knowledge of either council (*Rickarby* v. *New Forest R. D. C.* (1910), 74 J. P. 441). *Cf. O'Neill* v. *Waldron* (1905), 39 Ir. L. T. 252.

The plaintiffs had a sewer into which no sewage from an adjoining district might be turned without licence. Builders in the defendants' adjoining district drained houses into a sewer, and led such sewer with the defendants' approval into a road drain under the control of the county road authority. This drain discharged into the plaintiff's sewer. It was held that the defendants were responsible for the sewage thus indirectly delivered into the plaintiffs' sewer and an injunction was granted against them (*Rathmines and Rathgar Improvement Commissioners* v. *South Dublin Guardians*, [1899] 1 I. R. 157).

Effect of unlawful construction of an alleged "sewer."

In *Bateman* v. *Poplar District Board* (No. 2) (1887), 37 Ch. D. 272, NORTH, J., expressed a doubt whether the unlawful act of a stranger, done without the consent of the owner of a drain, could affect the ownership of the drain or the liability of the local authority by vesting it in them, and thus throwing the responsibility for it upon them. Again, in *Meader* v. *West Cowes L. B.*, *post*, it was said that a line of pipes, in order to become a sewer, must have been lawfully laid, and in *Hedley* v. *Webb*, [1901] 2 Ch. 126; 65 J. P. 425, COZENS-HARDY, J., expressed an opinion that a man carrying a sewer through a neighbour's land wrongfully, and without his consent, cannot make it a sewer so as to vest in the local authority. In *Pakenham* v. *Ticehurst R. D. C.* (1903), 67 J. P. 448; 2 L. G. R. 19, BUCKLEY, J., after referring to *Hedley* v. *Webb* as having decided that if by way of trespass a sewer has been laid down on any land without the knowledge of the landowner, it is competent for the landowner, when he finds out, to say: "This was wrongful against me, this is not a sewer at all, because it was put on my land by way of trespass against me, and it must be taken away," proceeded to say: "I conceive that he can say that, both as against the person who laid it and against the local authority. . . . But if, in point of fact, a system of pipes has been laid by one man in the land of another so as to constitute a sewer with the consent of the latter, or if it had been laid without consent, and subsequently he finds out it has been done, and says, 'I do consent; I do not complain of the trespass. I am quite content,' then it seems to me that a sewer will have been constituted, and as such the same will vest in the local authority." Cases decided under the metropolitan provisions as to "combined drains" (see p. 33, *post*) appear to show that as against the local authority, except where the owner concerned is, or derives title without purchase for value from, the person who originally made the connection, it is not material how a second house may have had its drainage connected with an existing drain, and that so long as the connection lasts, the drain which is common to the two houses is a sewer, whether

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the connection was made wrongly or surreptitiously or without the knowledge of the local authority. A builder built four houses which he, contrary to the directions of the sanitary authority, caused to be drained into one drain. He subsequently sold the houses to different purchasers. In a proceeding to compel the purchaser of the premises in which the drain, which so received the drainage of the four houses, was situate to repair such drain for the purpose of remedying a nuisance caused by its defective condition, it was held that the purchaser was not estopped by the wrongful act of his predecessor in title from alleging that the drain in question was a sewer, and that the duty of repairing it consequently lay, not on him, but on the sanitary authority (*Kershaw* v. *Taylor*, [1895] 2 Q. B. 471; 59 J. P. 726). In the same way, where the connection of more than one house with a drain was made without the consent of the sanitary authority or of the owner of the house to which the drain belonged, it was held that the common drain was a sewer (*Florence* v. *Paddington Vestry* (1895), 12 T. L. R. 30; and see *Klett* v. *St. Giles, Camberwell* (*Vestry of*) (1896), 60 J. P. 411). In another case, a drain for the drainage of four houses was constructed under the order of a metropolitan vestry, and became, under the definition of a drain contained in the Metropolis Management Act, 1855, a drain as distinguished from a sewer. A pipe which carried rain water from the roof of a fifth house was, without the sanction of the vestry, connected with this drain. It was held that the rain-water pipe was a drain, and that its unauthorised connection with the drain belonging to the four houses, converted the latter, from the point of junction onwards, into a sewer (*Holland* v. *Lazarus* (1897), 66 L. J. Q. B. 285; 61 J. P. 262). In another case, the owner of a block of houses in the metropolis had laid down a pipe to carry off the drainage from them, and connected the pipe with a sewer belonging to the vestry in a neighbouring street. There was no evidence of any notice having been given to the vestry, or of any order having been made by them, or of their sanction or of the approval of the Metropolitan Board of Works having been obtained. It was held that, although all these requirements were necessary in order to render the original construction of the drain lawful, yet the drain was, in fact, a sewer vested in and repairable by the vestry (*St. Matthew, Bethnal Green* (*Vestry of*) v. *London School Board*, [1898] A. C. 190; 62 J. P. 532). These cases were followed in *Geen* v. *St. Mary, Newington* (*Vestry of*), [1898] 2 Q. B. 1; 62 J. P. 564. With the cases above referred to, may be compared two others. In one an order of a metropolitan vestry had been obtained for draining a group of eleven houses by a combined operation, so that under the Metropolis Management Acts, the drain common to all the houses was a drain as defined by these Acts, and not a sewer. It was subsequently discovered that there had been a deviation in the course of the drain from the plan signed by the surveyor, but there was no evidence that any houses other than those on the plan were drained by the combined operation. It was held that a mere deviation in the course of the drain was not sufficient to convert it into a sewer, and that the vestry was not, therefore, liable for its repair (*Greater London Property Co., Ltd.* v. *Foot*, [1899] 1 Q. B. 972; 63 J. P. 420). *Cf. Harvey* v. *Busby* (1906), 70 J. P. 301; *Harvey* v. *Jaye* (1907), 71 J. P. 473. In the other case a metropolitan vestry had approved a plan for the drainage of a number of houses which did not show details as to the particular drainage of each house, but authorised the drainage of the houses in pairs by a series of combined operations. In a pair of such houses the drainage was carried off by two pipes, laid one under each house; these pipes joined into one pipe before they reached the sewer. The pipe under house A. took the whole of the drainage of A., together with that from a sink in the back part of house B. The connection between the sink in B. and the pipe under A. had been made at the time when the houses and drains were constructed. The trustees of a settlement were owners of both houses; they derived their title, without any purchase for value, from the original owner, by whom the houses and drains were constructed. The court inferred as a fact that the connection of the sink was made by the authority of the surveyor to the vestry, but held that even if it had been made without authority, the plaintiffs, not being purchasers for value, could get no higher rights than the original owner had as against the public, and that they were estopped from saying that the structure was a sewer (*Heaver* v. *Fulham Borough Council*, [1904] 2 K. B. 383; 68 J. P. 278). In *Wilson's Music, etc. Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563; 72 J. P. 37, CHANNELL, J., held that an unauthorised connection cannot make a "drain" a "sewer" as between an individual

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and an authority if it was wrongfully made by him or by a person through whom he claims otherwise than as a purchaser for value without notice. *Semble*, in the future, this exception as to purchasers for value without notice may be abrogated (*ibid.* : and see *Rickarby* v. *New Forest R. D. C.*, *ante*, p. 31). See also *Kershaw* v. *Smith & Co., Ltd.*, *infra*, as to the right of an authority, on learning that a drain sanctioned as a "combined drain" has been improperly laid, to cause it to be altered so as to conform to the plans and sanction.

Whether "once a sewer always a sewer": effect of disconnection.

A pipe carrying the sewage of two houses into the main sewer was a sewer within the meaning of a similar definition. Subsequently, the owner of one of the houses disconnected his sewage, so that the pipe was thereafter used for the drainage of one building only. It was held that the pipe did not, upon such disconnection taking place, become a drain repairable by the owner of the house still served by it, but remained a sewer vested in and repairable by the vestry (*St. Leonard, Shoreditch (Vestry of)* v. *Phelan*, [1896] 1 Q. B. 533 ; 60 J. P. 244). On a defective line of pipes alongside the boundary wall of premises being examined it was found that at the end of such line there was a hole in the wall, and on the adjoining premises a short drain leading from a buried gully to such hole. The gully, and the court in which it was, had long ago been covered by a mass of concrete. The pipes had been laid more than forty years ago, when the premises had a common owner, and were said to have been disconnected almost at once. A magistrate found that the defective line of pipes had never drained any substantial part of the adjoining premises, and was not a sewer. The court upheld this finding, and the L. C. J. is reported to have said that even if in the remote past the pipes had taken some drainage from the adjoining premises the time which had elapsed would have been sufficient to destroy their legal status as a sewer (*Probyn & Co., Ltd.* v. *Islington Borough Council*, Local Gov. Jo., Nov. 27th, 1909). In *Kershaw* v. *Smith & Co., Ltd.* (1913), 77 J. P. 297, a line of pipes authorised to be laid as a combined drain was wrongfully laid so as to be a "sewer" ; twenty-eight years later the authority, learning what had been done, caused the line of pipes to be altered so as to conform to the original plan and sanction. It was held to be no longer a "sewer."

Agreement to treat "sewer" as a private drain.

As to the effect of an agreement by an owner to treat what would otherwise become a sewer as a private drain, reference may be made to *Butt* v. *Snow*, *ante*, p. 29.

"Single private drain" under P. H. A., 1890, s. 19.

The P. H. A., 1890, s. 19, *post*, provides that, where two or more houses belonging to different owners are connected with a public sewer by a single private drain, the district council may cause a nuisance in such private drain to be abated at the cost of the owners of such houses, the expression "drain" for the purposes of the section including a drain made for the drainage of more than one building. But it is to be observed that the section does not affect the definition of a sewer except for the limited purposes for which it is applicable. For all other purposes the private drain remains a sewer within the meaning of this Act. See *per* WRIGHT, J., in *R.* v. *Hastings (Mayor, etc. of)*, [1897] 1 Q. B. 46 ; 60 J. P. 759 ; and *per* WARRINGTON, J., in *Pemsel and Wilson* v. *Tucker*, [1907] 2 Ch. 191 ; 71 J. P. 547. See also the section itself and the cases decided upon it, *post*.

"Drain," "sewer" and "combined drain" in metropolis.

The definitions of "drain" and "sewer" in the Metropolis Management Act, 1855, s. 250, are the same as those in the text, with this qualification, that the word "drain" in the metropolis also includes a drain for draining any group or block of houses by a "combined operation" under the order of any vestry or district board. Numerous decisions have been given with reference to this part of the definition. See *Bateman* v. *Poplar District Board of Works* (1886), 33 Ch. D. 360 ; *Appleyard* v. *Lambeth (Vestry of)* (1896), 66 L. J. Q. B. 347 ; 61 J. P. 276 ; *Geen* v. *Newington Vestry*, *supra* ; *Bullock* v. *Reeve* (1900), 70 L. J. K. B. 42 ; 65 J. P. 164 ; *Stokes* v. *Haydon* (1901), 65 J. P. 756 ; 84 L. T. 531 ; *Gorringe* v. *Mayor, etc. of Shoreditch* (1902), 66 J. P. 565 ; 86 L. T. 592 ; *Kershaw* v. *Taylor*, [1895] 2 Q. B. 471 ; 59 J. P. 726 ; *Holland* v. *Lazarus*, *supra* ; *Greater London Property Co.* v. *Foot*, [1899] 1 Q. B. 972 ; 63 J. P. 420 ; *High* v. *Billings* (1903), 67 J. P. 388 ; *Silles* v. *Fulham*, *supra* ; *Heaver* v. *Fulham Borough Council*, *supra* ; *Harvey* v. *Busby* (1906), 70 J. P. 301 ; 95 L. T. 91 ; *Harvey* v. *Jaye* (1907), 71 J. P. 473 ; 97 L. T. 543 ; *Wilson's Music and General Printing Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563 ; 72 J. P. 37 ; *House Property and Investment Co.* v. *Grice* (1911), 75 J. P. 395 ; 9 L. G. R. 758 ; *Kershaw* v. *Smith & Co., Ltd.* (1913), 77 J. P. 297 ; *Kershaw* v. *Paine* (1914), 78 J. P. 149.

Section 4.

"Slaughter-house."

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle horses or animals of any description for sale:

A local Act, which closely followed the language of the Markets and Fairs Clauses Act, 1847, s. 19, enacted that "no person shall slaughter any cattle or dress any carcase for sale as human food or food of man in any place within the limits other than a slaughter-house." It was held that to slaughter cattle on the private premises of an inhabitant, unless *for sale* as human food, was no offence (*Elias* v. *Nightingale* (1858), 22 J. P. 131; 8 El. & Bl. 698).

In a Scotch case (*Renfrew C. C.* v. *Anderson* (1899), 1 F. (Just. Cas.) 48), it was held that a person did not "use premises as a slaughter-house" merely because he killed two pigs in the garden behind the house of their owner.

"Water company."

"Water company" means any persons or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

These words are substituted for the words *waterworks company* in the previous Acts. The undertaking of a waterworks company was transferred by statute to a borough. The profits of the waterworks were under a subsequent statute to be transferred to the borough improvement fund, or, at the option of the corporation, to be applied in reducing the price of water to consumers. It was held that the corporation were supplying water for "their own profit" within the meaning of the above definition (*Wolverhampton (Corporation of)* v. *Bilston (Commissioners of)*, [1891] 1 Ch. 315). The point was not argued on appeal (7 T. L. R. 374).

"Waterworks."

"Waterworks" includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company:

Water percolating through the ground in no defined or visible channel is not a "stream" (*McNab* v. *Robertson*, [1897] A. C. 129; 61 J. P. 468).

As to what constitutes a "main" pipe, see *Whittington Gas Co.* v. *Chesterfield Gas and Water Board*, on p. 128, *post*.

"Bakehouse Regulation Act."

"Bakehouse Regulation Act" means the Bakehouse Regulation Act, 1863 [26 & 27 Vict. c. 40]:

This Act was repealed by the Factory and Workshop Act, 1878. The latter statute contained provisions which in effect took away the control of bakehouses from local authorities and vested it in the factory inspectors, but it also has now been repealed by the Factory Act, 1901, the provisions of which as to retail bakehouses are enforceable by local authorities. See that Act in App. I., and see also s. 10 and notes thereto, *post*, p. 41.

"Artizans and Labourers Dwellings Act."

"Artizans and Labourers Dwellings Act" means the Artizans and Labourers Dwellings Act, 1868 [31 & 32 Vict. c. 130]:

This Act, with many other subsequent statutes relating to artizans' dwellings, was repealed and re-enacted, with amendments, by the Housing of the Working Classes Act, 1890, *post*, Vol. II., which itself, so far as it relates to England, has been amended by Acts of 1894, 1900, 1903, 1909, 1914, 1919, and 1921, all of which will be found, *post*, Vol. II.

Section 4.

"Baths and Wash-houses Acts."

"Baths and Wash-houses Acts" means the Baths and Wash-houses Act, 1846 [9 & 10 Vict. c. 74], and the Baths and Wash-houses Act, 1847 [10 & 11 Vict. c. 61]:

With these must now be read the Baths and Wash-houses Act, 1878, the Baths and Wash-houses Act, 1882, the Baths and Wash-houses Act, 1896 (which relates only to London), and the Baths and Wash-houses Act, 1899.

"Labouring Classes Lodging Houses Acts."

"Labouring Classes Lodging Houses Acts" means the Labouring Classes Lodging Houses Act, 1851 [14 & 15 Vict. c. 34], the Labouring Classes Dwelling Houses Act, 1866 [29 & 30 Vict. c. 28], and the Labouring Classes Dwelling Houses Act, 1867 [30 & 31 Vict. c. 28]:

These Acts are repealed and re-enacted by the Housing of the Working Classes Act, 1890, *post*, Vol. II., which itself, so far as relates to England, has been amended by Acts of 1894, 1900, 1903, 1909, 1914, 1919, and 1921, all of which will be found, *post*, Vol. II.

"Sanitary Acts."

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act.

Schedule V., Part I., *post* (now repealed by the S. L. R. A., 1893), contains a list of repealed enactments, and has the following note appended to it: "Of the above Acts the following (namely), 'The Public Health Act, 1848,' and 'The Local Government Act, 1858,' and 'The Local Government Act (1858) Amendment Act, 1861,' and 'The Local Government Act Amendment Act, 1863,' are in the Act referred to as '*The Local Government Acts*'"; such definition ought obviously to have been inserted in this section.

"The Local Government Acts."

"Sanitary purposes."

"Sanitary purposes" means any object or purposes of the Sanitary Acts:

"And of this Act," seeing that the objects and purposes of the Sanitary Acts are the same as those of this Act.

"Court of quarter sessions."

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises:

The Interpretation Act, 1889, s. 13, provides that in every Act, whether passed before or after the commencement of that Act, the expression "Court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the recorder of a municipal borough having a separate court of quarter sessions. This definition does not, however, supersede the text.

The words "or any part of the matter, as the case may be," which were in the P. H. A., 1848, s. 82, are omitted. Hence, though the district may be situated partly in the jurisdiction of one court of quarter sessions and partly in that of another, it is assumed that the matter in question will arise in one of them only. But if the matter does not arise in one of them only, both courts of quarter sessions would have jurisdiction, and consequently either. The meaning of the definition appears to be that the jurisdiction of a court of quarter sessions over any matter arising within its local limits is not to be affected by the fact that the sanitary district in which it arises is situate in part only within such limits. But it does not give to a court of quarter sessions jurisdiction over a matter not arising within

Note to Section 4.

its local limits, merely because the district in which the matter arises extends nto such limits.

"Court of summary jurisdiction."

"*Court of summary jurisdiction*" *means any justice or justices of the peace, stipendiary, or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to:*

This definition and the next were repealed by the S. L. R. A. (No. 2), 1893. It is practically the same definition as that which was contained in the S. J. A., 1879, s. 50. In *R.* v. *Price* (1880), 5 Q. B. D. 300; 44 J. P. 248, it was held that the Summary Jurisdiction Acts regulated the procedure only in cases where justices were sitting and acting *judicially* as a court of summary jurisdiction, and not in cases where their duties were ministerial only. But by the S. J. A., 1884, s. 7, it was provided that s. 50 of the S. J. A., 1879, should include such justice, justices, or magistrates as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission, or, by the common law. And now by the Interpretation Act, 1889, s. 13, superseding the text, it is provided that in every Act, whether passed before or after the commencement of that Act, the expression "Court of Summary Jurisdiction" shall mean any justice or justices of the peace, or other magistrates by whatever name called, to whom jurisdiction is given by, or who is authorised to act under the Summary Jurisdiction Acts, and whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act or by virtue of his commission, or under the common law. In consequence of this definition it has been held that justices sitting to enforce payment of poor rates are now a court of summary jurisdiction and can therefore state a special case (*R.* v. *London* (*Lord Mayor of*) (1887), 52 J. P. 70; 57 L. T. 491; *Fourth City Mutual Building Society* v. *East Ham* (*Churchwardens of*), [1892] 1 Q. B. 661; 56 J. P. 440; *cf. Davis* v. *Woodfield* (1900), 64 J. P. 215; 81 L. T. 782); but the point cannot be regarded as definitely settled (*Boulter* v. *Kent JJ.*, [1897] A. C. 556; 61 J. P. 532; *R.* v. *West Riding JJ.* (1898), 14 T. L. R. 199; *R.* v. *Lindsey JJ.*, [1912] 2 K. B. 413). See also *Hagmaier* v. *Willesden Overseers*, [1904] 2 K. B. 316; 68 J. P. 343; *Huish* v. *Liverpool JJ.*, [1914] 1 K. B. 109; 78 J. P. 45.

"Summary Jurisdiction Acts."

"*Summary Jurisdiction Acts*" *means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same.*

The Interpretation Act, 1889, s. 13, superseding the text, provides that in every Act, whether passed before or after the commencement of that Act, the expression "Summary Jurisdiction Acts" shall mean the S. J. A., 1848, and the S. J. A., 1879, and any Act, past or future, amending those Acts or either of them. The amending Acts are the S. J. (Process) A., 1881; the S. J. A., 1884; the S. J. A., 1899; the Criminal Justice Administration Act, 1914, see Fourth Schedule, Extent of Repeals.

Other definitions in text of Act.

ADDITIONAL DEFINITIONS.—In addition to the definitions given in the above section, several others are contained in the Act. See as to *Earth-closet*, s. 37; *Dwelling*, s. 74; *Common Lodging-house*, s. 89; *Nuisance Authority*, s. 108; *Mortuary*, s. 141; *Superintendent Constable*, s. 171; *Within the prescribed distance*, s. 171; *General Expenses*, s. 229; *Special Expenses*, s. 229; *Riparian Authority*, s. 287 *Port Sanitary Authority*, s. 287; *Special Act*, s. 316; *The Limits of the Special Act*, s. 316; *The Promoters of the Undertaking*, s. 316; *The Undertakers*, s. 316; *Owner*, Sched. II., r. 10; *Ratepayer*, Sched. II., r. 11; *The Local Government Acts*, Sched. V., Part I.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

Urban and rural sanitary districts.

5. For the purposes of this Act England, except the metropolis (*a*), shall (*b*) consist of districts to be called respectively—

(1) Urban sanitary districts, and

(2) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

This and the following sections must now be read subject to the provisions of the L. G. A., 1894, *post*, which has effected important changes in the styles and constitution of sanitary authorities and their districts.

"The scheme of the Public Health Act, by s. 5, appears to have been to divide all England into certain districts, in each of which there was to be an authority, either rural or urban; and each of such districts was to be subject thenceforth to the jurisdiction of the local authority established by such Act, which was to be invested with the powers in the Act mentioned" (*per* WILLS, J., in *Lea* v. *Facey* (1886), 17 Q. B. D. 139, 142; 50 J. P. 295).

(*a*) See the definition in s. 4, *ante*, p. 4.

(*b*) Although this word imports futurity, that is not the effect of the section, for these districts existed at the date of the Act, and all such districts as then constituted were continued by s. 326, *post*.

Description of urban districts and urban authorities.

6. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies specified in the second column of the said table in relation to the said places respectively.

Urban District.	Urban Authority.
Borough (*a*) constituted such either before or after the passing of this Act.	The Mayor, Aldermen, and Burgesses acting by the Council (*b*).
Improvement Act district (*c*) constituted such before the passing of this Act (*d*) and having no part of its area situated within a borough or local government district.	The Improvement Commissioners.
Local Government district (*e*) constituted such either before or after the passing of this Act (*f*), having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district (*g*).	The Local Board.

Provided that (*h*)—

(1) Any borough, the whole of which is included in and forms part of a local government district or Improvement Act district,

Section 6.

and any Improvement Act district which is included in and forms part of a local government district, and any local government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and

(2) Where an Improvement Act district is coincident in area with a local government district, the improvement commissioners, and not a local board, shall be the urban authority therein (*i*); and

(3) Where any part of an Improvement Act district is situated within a borough or local government district, or where any part of a local government district is situated within a borough, the remaining part (*k*) of such Improvement Act district or of such local government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs (*l*).

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the local government district of Oxford. So much of the borough of Folkestone as is not included within the local government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing the Folkestone Improvement Act, 1855 (*m*).

(*a*) See the definition of "borough" in s. 4, *ante*, p. 3.

(*b*) See s. 198, and the notes to that section, *post*.

(*c*) In s. 4, *ante*, p. 4, will be seen the definition of "Improvement Act district" and "improvement commissioners."

(*d*) These were the words used in 35 & 36 Vict. c. 79, s. 4, where of course they referred to the date of that Act. As here used they would have extended the districts to such as were formed in the interval between that Act and the passing of this Act, but in fact none such were created during that period.

(*e*) See in s. 4, *ante*, p. 4, the definition of a "local government district."

(*f*) See note (*d*) above. As to how a local government district may be constituted after the passing of this Act, see the notes to s. 271, *post*, and the provisions of the L. G. A., 1888, s. 57, *post*.

(*g*) A borough created hereafter will be an urban district.

(*h*) All these provisions took effect under previous Acts, but since the passing of the L. G. A., 1894, the whole of this proviso may be regarded as spent.

(*i*) The case of a borough which was included in 35 & 36 Vict. c. 79, s. 4, prov. 2, is here omitted.

(*k*) It will be noticed that this proviso does not make any reference to the part which is *within* the borough. That became part of the urban sanitary district. See also s. 339, *post*.

(*l*) See s. 270, *post*.

(*m*) After the operation of the L. G. A., 1888, provisional orders were made under s. 52 of that Act, dealing with all of these boroughs except Folkestone and Newport, whereby the councils became the urban sanitary authorities: see the section and the notes thereto, *post*. Oxford is now a county borough: see further as to it, s. 342, *post*. By 39 & 40 Vict. c. lxi. the corporation of Newport were placed on the same footing as sanitary authorities in other boroughs. Part of the borough of Folkestone is still in the district of the Sandgate Urban District Council, but the corporation are the sanitary authority for the remainder of the borough. **Note to Section 6.**

7. Every local board (*a*), and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate, designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act), by such name as they then bear (*b*), and (in the case of local boards constituted after the passing of this Act) by such name (*c*) as they may with the sanction of the Local Government Board adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name and to hold lands without any licence in mortmain for the purposes of this Act (*d*). Incorporation of local boards and improvement commissioners.

The above section is still in force, although local boards and improvement commissioners are called urban district councils (see the L. G. A., 1894, s. 21 (1), *post*).

(*a*) It must be remembered that local boards and other local authorities were incorporated by the Sanitary Act, 1866, s. 46. This clause, therefore, incorporated improvement commissioners who became urban sanitary authorities. Rural district councils were incorporated by the L. G. A., 1894, s. 24 (7), *post*. Incorporation of other sanitary authorities.

(*b*) Provision is contained in s. 311 for the change of the name of corporation, but that provision is practically superseded by the L. G. A., 1894, s. 55 (3). In the case of new urban district councils the order of the county council under the L. G. A., 1888, s. 57, provides for the name to be borne by the council and district.

It may be right to observe that "a parliamentary corporation is a corporation for the purposes only for which it has been established by Parliament, and has no existence for any other purpose, and that whatsoever is done beyond the scope of such purpose is *ultra vires* and void" (*per* POLLOCK, C.B., in *National Guarantee Manure Co.* v. *Donald* (1859), 4 H. & N. 8, at p. 16). And see *Att.-Gen.* v. *Hastings Corporation* (1902), 67 J. P. 165; 1 L. G. R. 41; *Att.-Gen.* v. *Manchester Corporation*, [1906] 1 Ch. 643; 70 J. P. 201; *Batson* v. *London School Board* (1903), 67 J. P. 457; 20 T. L. R. 22; *Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453; *Dundee Harbour Trustees* v. *Nicol*, [1915] A. C. 550; 112 L. T. 697; *Kemp* v. *Corporation of Glasgow*, [1920] A. C. 836; 84 J. P. 225. The doctrine of estoppel does not apply in the case of a corporation where its grant is in contravention of a statutory enactment (*Bishop of Bangor* v. *Parry*, [1891] 2 Q. B. 277; *Davis* v. *Leicester Corporation*, [1894] 2 Ch. 208; *Canterbury Corporation* v. *Cooper* (1908), 72 J. P. 465; 99 L. T. 612). For further information as to the law on the subject the reader is referred to the treatise on the doctrine of *ultra vires* by Mr. Seward Brice. Corporations and the doctrine of *ultra vires*.

(*c*) See note (*b*), *supra*.

(*d*) But for this provision a licence in mortmain would be necessary: see the Mortmain and Charitable Uses Act, 1888, s. 1, and note, *post*. It must be noticed that there is no limit to the amount of lands to be held by these incorporated bodies if the land be required for the purposes of the Act. When a licence in mortmain is obtained there is usually such limit. The acquisition of lands for the purpose of the Act is provided for in s. 176, *post*. Holding of land.

A similar provision as to rural district councils is contained in the L. G. A., 1894, s. 24 (7), *post*.

By the Bodies Corporate (Joint Tenancy) Act, 1899, *post*, corporations may now hold property as joint tenants.

Section 8.

Election of local boards.

8. The members of local boards (*a*) shall be elective, *and the number and qualification of members of local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in Schedule II. to this Act* (*b*).

(*a*) The statute thus provided only for local boards, *i.e.*, boards elected for L. G. A. districts. And see as to certain local boards, s. 339, *post*.

(*b*) The italicised words were repealed by the L. G. A., 1894, s. 89, Sched. II. The matters therein referred to are now provided for by ss. 23 and 48 of that Act and the rules of the L. G. B. framed thereunder, which also extend to elections of urban sanitary authorities for other urban districts, which are not boroughs, *i.e.*, those which were formerly Improvement Act districts. In boroughs the urban sanitary authority being the town council is elected under the Municipal Corporations Act, 1882.

Description of rural districts and rural authorities.

9. The area of any union (*a*) which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district (*b*), shall be a rural district, and the guardians of the union shall form the rural authority of such district (*c*): *Provided* (*d*) *that*—

(1) *An ex officio guardian* (*e*) *resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union:*

(2) *An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority:*

(3) *Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made, the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.*

Where the number of elective guardians *who are not by this section disqualified from acting and voting as members of the rural authority* (*f*) is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number *from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union*, and the persons so nominated shall be entitled to

act and vote as members of the rural authority but not further or otherwise (*g*). Section 9.

Subject to the provisions of this Act, all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act ; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act (*h*).

(*a*) See definition in s. 4, *ante*, p. 6.

(*b*) See s. 6, *ante*, p. 37. Though the greater part of the union might be comprised in urban districts, yet if all were not, that which remains of the union, though practically only the residue, was to be a rural district. See also note (*a*), *ante*, p. 6.

(*c*) These words have not been repealed, but the guardians are no longer the rural authority, which consists of persons elected as rural district councillors. These are guardians for the parishes for which they are elected, and with the guardians for the urban parishes in the union constitute the board of guardians, which is now a body quite distinct from the rural district council: see the L. G. A., 1894, s. 24, *post*. Guardians and rural district councillors.

(*d*) These provisoes were repealed by the L. G. A., 1894, s. 89, Sched. II., *post*.

(*e*) By the L. G. A., 1894, there are now no *ex officio* guardians. As to such guardians formerly, see 4 & 5 Will. 4, c. 76, s. 38, amended by 7 & 8 Vict. c. 101, s. 24.

(*f*) The words in italics were repealed by the S. L. R. A., 1898.

(*g*) The italicised words in this clause were repealed by the L. G. A., 1894, s. 89, Sched. II., *post*.

The provisions of this clause will apply in some cases where by virtue of the L. G. A., 1894, a rural district formerly situate in two countries becomes divided into two districts, and one or both of these have less than five elected councillors: see s. 24 (5) of that Act, *post*. The M. of H. periodically nominate the required number of persons to serve upon certain rural district councils (*e.g.*, that of South Mimms), and make a practice of selecting persons who are qualified for election as councillors.

(*h*) This clause was repealed by the L. G. A., 1894, s. 89, Sched. II., *post*.

10. In addition to the powers, rights, duties, capacities, liabilities and obligations exercisable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority (*a*) which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable or attaching by and to the local authority under the Bakehouse Regulation Act (*b*), and the Artizans and Labourers Dwellings Act (*c*), or any Acts amending the same. Powers and duties of urban authorities.

Where the Baths and Wash-houses Acts (*d*) and the Labouring Classes Lodging Houses Acts (*e*), or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exercisable by or attaching to the council incorporated commissioners local board improvement commissioners and other commissioners or persons acting in the execution of the said Acts or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts ;

Section 10.

and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts (*c*).

Where any local Act other than an Act for the conservancy of any river (*e*) is in force within the district of an urban authority, conferring on any commissioners trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority (*f*).

(*a*) This section is in terms less extensive than the P. H. A., 1872, s. 7, and only refers to the particular Acts mentioned. The statute in its different parts enables the urban authority to execute the powers thereby confided to them. But the Act of 1872 vested all the powers and liabilities of the sanitary Acts in the urban sanitary authorities, and s. 326 of this Act gives, in substitution for such powers and liabilities now repealed, the powers and liabilities specified in this Act. The last paragraph of this section provides for powers contained in local Acts.

Control of retail bakehouses.

(*b*) As already stated in the note to s. 4, *ante*, p. 34, this Act was repealed by the Factory and Workshop Act, 1878, s. 107. But by the Factory and Workshop Act, 1901, s. 102, as respects every retail bakehouse, the provisions of Part V., ss. 97—101, of that Act, shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of the section the medical officer of health is to have the same powers of entry, inspection, taking legal proceedings, and otherwise, as an inspector. By the same section, a *retail bakehouse* is defined to mean any bakehouse or place not being a factory, the bread, biscuits, or confectionery baked in which are sold, not wholesale, but by retail in some shop or place occupied with such bakehouse. But bakehouses which are not *retail* as defined by the Act are not under the control of local authorities. These remain under the control of the factory inspectors.

Sanitation of factories.

Section 5 of the Act of 1901 provides however, that where it appears to an inspector under that Act that any act, neglect, or default in relation to any drain, water-closet, earth-closet, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health, but not under that Act, he is to give notice thereof to the district council of the district, and the district council are to make inquiry, and take action if they think proper, and to inform the inspector of the proceedings taken. Section 38, *post*, p. 101, s. 22 of the P. H. A., 1890, and s. 9 of the Factory and Workshop Act, 1901, contain provisions which enable the local authority to compel owners or occupiers of factories and workshops to provide proper privy accommodation. The provisions of the Factory and Workshop Act, 1901, the effect of which has been here stated, so far as they are material for the present purpose, will be found in App. I., *post*, Vol. II.

Working class lodging-houses: the Housing Acts.

(*c*) These Acts are now repealed and replaced by the Housing of the Working Classes Acts, 1890, 1894, 1900, 1903, 1909, 1914, 1919 and 1921, *post*, Vol. II., the administration of which for the most part falls to the sanitary authorities. The provisions of these Acts as to working class lodging-houses are now in force universally.

Baths and washhouses.

(*d*) These Acts (9 & 10 Vict. c. 74; 10 & 11 Vict. c. 61; 41 & 42 Vict. c. 14; 45 & 46 Vict. c. 30; 62 & 63 Vict. c. 29) so far as material are set out in App. I., *post*. 59 & 60 Vict. c. 59, relates only to London.

(*e*) There is no definition of these words, but they are explained in s. 327 (3), and they occur again in s. 303.

Lighting and paving, etc. trusts.

(*f*) See s. 322, *post*, as to a particular case. It may be well to refer to 20 & 21 Vict. c. 50, s. 2, though it was almost wholly superseded by 35 & 36 Vict. c. 79, s. 7, as interpreted by 37 & 38 Vict. c. 89, s. 3, and now by the above section. It enables trustees under any Act for lighting, paving, etc. any borough to transfer their powers to the borough corporation, and by the interpretation clause "trustees"

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means "trustees so charged with the execution of a public trust or duty." It was held, however, that a local board were not trustees within the meaning of this definition, and could not transfer their powers to a borough corporation; and that, as the district of the local board and the corporation were not identical (that of the former being more extensive), 21 & 22 Vict. c. 98, s. 26, did not justify such a transfer (*Swinford* v. *Keble* (1866), L. R. 1 Q. B. 549; 30 J. P. 533).

The effect of the provision in the text was to reconstitute improvement commissioners as new bodies under this Act, vesting in them as such new bodies the powers given by the local Acts as well as those given by this Act, and such commissioners in subsequently doing any act in the exercise of the powers originally conferred by their local Acts are acting under this Act, and consequently are entitled in respect of such act to any protection or privilege given by this Act to members of local authorities acting under its provisions (*Lea* v. *Facey* (1887), 19 Q. B. D. 352; 52 J. P. 756; *cf. Douglass* v. *Rhyl U. D. C.*, [1913] 2 Ch. 407; 77 J. P. 373).

The case of an improvement district becoming a borough is provided for by s. 310, *post.*

Powers and duties of rural authorities.

11. In addition to the powers rights duties capacities liabilities and obligations exercisable by or attaching to a rural authority under this Act, every rural authority shall, within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same.

Upon the passing of the Factory and Workshop Act, 1878, this section was practically repealed, for the Bakehouse Regulation Act was repealed by that Act. It has been pointed out, however, in note (*b*) to s. 10, *ante*, p. 42, that the control of local authorities over bakehouses has been partially restored. See the note, and see also the provisions of the Factory Acts in App. I., *post.*

The powers directly conferred upon rural authorities by this Act are in most cases supplemented by orders of the L. G. B. and the M. O. H. under s. 276, declaring specified provisions of the Act which relate to urban districts to be in force in the rural district or part thereof. Similar orders are also issued under s. 5 of the P. H. A. (Amendment) Act, 1890, and s. 4 of the Private Street Works Act, 1892. See also s. 3 of the P. H. A. (Amendment) Act, 1907.

Vesting of property in local authorities.

12. *From* (*a*) *and after the passing of this Act* all such property real and personal, including all interests rights and easements in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any borough, or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians as the local authority of their district under this Act, subject to all debts, liabilities, and obligations affecting the same property.

All debts liabilities and obligations incurred by any authority whose powers rights duties liabilities capacities and obligations are under this Act exercisable by or attached to a local authority may be enforced against the local authority to the same extent and in the same manner

Section 12. as they might have been enforced against the authority which incurred the same (*b*).

Object of vesting provision.

(*a*) The words in italics were repealed by the S. L. R. A. (No. 2), 1893. It must be remembered that by virtue of 35 & 36 Vict. c. 79, s. 9, the property referred to had been transferred, and such of it as still remains the property of the authorities mentioned, is therefore continued to be vested in them. But that clause only transferred to the sanitary authorities property applicable to the sanitary purposes thereby placed under the management of those authorities. Thus, if a borough included in a local Act district had been absorbed in an Improvement Act district, all the property of the town council did not pass, but only so much as related to the sanitary purposes. So, in the case of a parish which was a sewer authority, all the property of the parish did not pass, but only what belonged to the parish in connection with the sewers. "But for this enactment there would be a doubt as to whether the property which formerly belonged to the improvement commissioners continued to be theirs, or in what capacity it continued to be theirs, and the Act solves that difficulty by saying that henceforth such property shall be held by the body of commissioners as the local authority" : *per* WILLS, J., in *Lea* v. *Facey* (1886), 17 Q. B. D. 143 ; 50 J. P. 295 ; and see the observations of the C. A. in the same case (1887), 19 Q. B. D. 352 ; 52 J. P. 756. *Cf. Douglass* v. *Rhyl U. D. C.*, *ante*, p. 43.

Enforcement of liabilities, etc. of predecessors.

(*b*) The urban or rural authority have the same legal answers to claims that the former authority had, and such others as would be open to them in claims of a like character against themselves, such as the Statute of Limitations.

With regard to the liability of a local board in respect of a decree made against their predecessors, reference may be made to *Att.-Gen.* v. *Corporation of Birmingham*, (1880), 15 Ch. D. 423. In that case a perpetual injunction was decreed in 1875 against the corporation as the sanitary authority of B., restraining them from allowing sewage to flow into a river, the injunction being suspended for five years to give the borough an opportunity to execute certain works. At the expiration of that period the plaintiffs desired to enforce the injunction, but in the meantime the B. T. and R. District Drainage Board had succeeded to the rights and liabilities of the corporation in respect of the sewage. It was held that the new board could not then be made parties to the original action. Thereupon an action was commenced against the new board, the plaintiffs claiming a declaration that they were entitled to the same benefit of the decree against the defendants, as if they had been defendants in the former suit. It was held that the new board were not made by this Act subject to any liabilities of their predecessors except those attaching under the Act, and were therefore not bound by a decree against them, and that, there being no allegation of any nuisance committed by the new board, the plaintiffs had no cause of action (*Att.-Gen.* v. *Birmingham, Tame, and Rea District Drainage Board* (1881), 17 Ch. D. 685 ; 46 J. P. 36).

But where a serious nuisance had admittedly been caused by a rural authority's mode of dealing with sewage, it was held that the dissolution of that authority and the constitution, by order of the L. G. B., of an urban sanitary authority over the district, with the rights, powers, duties, etc., of the old authority, did not absolve the new authority from liability to an injunction for continuing the nuisance without taking any effectual steps to remedy it. Eleven months having elapsed since the constitution of the new authority, the operation of the injunction was suspended for two months only (*Taylor* v. *Friern Barnet L. B.*, W. N. (1885), p. 7).

PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains (a).

Sewers vested in local authority.

13. All existing and future sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto (*b*),

Except—

(1) Sewers made by any person (*c*) for his own profit (*d*), or by any company for the profit (*d*) of the shareholders (*e*) ; and

(2) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (*f*) ; and

(3) Sewers under the authority of any commissioners of sewers appointed by the Crown (*g*),

shall vest in (*h*) and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same, or to whom the same have been transferred (*i*).

(*a*) Note in s. 4, *ante*, pp. 24, 26, the distinction between *sewers* and *drains*.

(*b*) As to these words, see notes on pp. 28, 29, *ante* ; note (*a*) to s. 14, p. 49, *post* ; note (*e*) to s. 16, p. 57, *post*, and note (*c*) to s. 299, *post*.

(*c*) This word, according to the definition in s. 4, *ante*, p. 6, includes a corporation aggregate. It appears also to apply to a corporation sole.

Sewers made "for profit"—ordinary sewers ;

(*d*) A sewer made by the owner of some of the houses in a street not yet a highway, though made for the purpose of draining his own amongst other houses, is not a sewer made for his own "profit" within the meaning of this section (*Acton L. B.* v. *Batten* (1884), 28 Ch. D. 283 ; 49 J. P. 357). This decision was followed in *Pinnock* v. *Waterworth* (1887), 51 J. P. 248 ; 3 T. L. R. 563, MATHEW, J., saying : "The builder had constructed a number of houses. He made a drain and a cesspool and connected them with the first house, and as he completed successive houses he continued the drain from one house to the other, carrying the cesspool forward, and, finally, when all the houses had been completed, there was a line of pipes connecting them with the cesspool. In time that cesspool became a nuisance. Now, was the line of pipes and the cesspool something made for the purpose of profit within the meaning of s. 13 ? It could not be said to be so. If such pipes were to be excepted from the Act the operation of the Act would be narrowed down to the smallest possible point." In another case a piece of land was laid out for building ; a street was laid out and a sewer made which drained the houses. A local board was afterwards formed. The sewer was sufficient as long as sewage could be discharged into the Thames ; but, when this was prohibited, it became necessary to construct a new sewer to carry the sewage in a different direction. The local board having made a new sewer sought to charge the frontagers under s. 150. It was held that the original sewer was not made by any person for his own profit, and, therefore, vested in the local board, who were bound to keep it in repair, and make any necessary

Note to Section 13.

alteration at the public expense (*Bonella* v. *Twickenham L. B.* (1887), 18 Q. B. D. 577; 51 J. P. 580). HUDDLESTON, B., said: "No doubt the sewer was made for the use of the owners of the houses, but the words of the section are, 'for his own profit,' not 'for his own use.' An illustration of how the exception might apply occurs to me. It might refer to the case of a person who was utilising sewage and made a sewer to conduct the sewage to works used for that purpose, or it might apply to a company formed for the purpose of makng manure who might require to conduct the sewage to a particular place in the course of their business. I think the second exception in the same section bears out this view, for it applies to sewers for the purpose of draining, preserving or improving land under local or private Acts, or for irrigating land. This provision throws light on the word 'profit,' and goes to show that it is not the same as use. If the contention is right, no sewers would ever vest in the local board." The decision was affirmed (1887), 20 Q. B. D. 63; 52 J. P. 356). In *Ferrand* v. *Hallas Land and Building Co.*, [1893] 2 Q. B. 135; 57 J. P. 692, the plaintiff was the owner of land on both sides of a stream, and the defendants were owners of land near to and higher up the stream. The defendants erected on their land a row of sixty-nine cottages, and a long intercepting sewer, with which each of the cottage drains was connected, the sewer being connected with the stream so that the drainage from the cottages passed down the drains into the sewer and so into the stream. The drains and sewer were constructed in pursuance of plans sanctioned by the local authority. It was held that the sewer was not made for the profit of the defendants, and was vested in the authority. *Per* LOPES, L.J.: "A sewer made for profit means, in my opinion, not a sewer made for the mere purpose of drainage, not a sewer made for the mere purpose of discharging matter not in any way to be utilised, but which it was essential to get rid of for sanitary purposes, but a sewer made for the purpose of realising a profit, above and beyond, and independent of any sanitary purpose. Such, for instance, as a sewer made to collect feculent matter with a view of utilising it for manure, or a sewer made for the purpose of carrying away surface or other water and using it for irrigation." *Per* A. L. SMITH, L.J. (by way of further illustration): "It will be noticed that a sewer need not necessarily convey sewage matter in order to constitute it a sewer. It would be none the less a sewer within the Act of 1875 if it conveyed only rain or surface water. The draining off of rain or surface water, collected from different premises by different feeders into one main drain, would constitute that main drain a sewer within the meaning of the Act. In some manufacturing districts this is done, and the water so collected is passed on and distributed upon payment amongst different receivers. A sewer made for this purpose would, in my opinion, be within the exception." See also *Kingston-upon-Hull Corporation* v. *N. E. Rail. Co.*, [1916] 1 Ch. 31; 80 J. P. 57. In *Minehead L. B.* v. *Luttrell*, [1894] 2 Ch. 178, the defendant, lord of the manor and owner of a large part of the town of M., constructed, in 1878, at his own expense, and with the sanction of the local authority (where necessary), a system of sewerage for draining the town, and he subsequently extended the system to new streets from time to time. Most of the houses in the town were connected with the system, and a voluntary sewage rate, varying in amount from year to year, was received by the defendant from the occupiers. The plaintiff authority claimed that the sewers were vested in them, but it was held that they were made by the defendant for his own profit. See also as to private sewerage systems, *Titterton* v. *Kingsbury Collieries, Ltd.*, p. 69, *post*. In *Vowles* v. *Colmer* (1895), 64 L. J. Ch. 414, the plaintiffs laid out and developed a building estate, on one side of which there was a roadway, and, at their own expense, constructed a sewer in the roadway on their own side of its middle line. The building plots were disposed of from time to time, generally at fee farm rents; and on entering into agreements with purchasers the plaintiffs required a payment to be made for connecting the drainage system of the premises sold with the sewer. The defendant was the owner of a house on the other side of the roadway, opposite the plaintiffs' estate, and he claimed the right to connect the drains from his house with the sewer without paying the plaintiffs therefor. The plaintiffs sought an injunction, but ROMER, J., dismissed the action on the ground that *Ferrand* v. *Hallas Land and Building Co.*, *supra*, was not distinguishable without over-refinement. "Profit" is not to be restricted to a direct money payment. Thus, a sewer made not for ordinary drainage purposes, but to enable the land on which it is made to be occupied

land and agricultural drains.

Note to Section 13.

more profitably, or to avoid an expenditure which would otherwise have to be incurred in order that the occupation might be equally beneficial, is made for the profit of the owner within the meaning of the section, and does not vest in the authority. This was so held in the case of a line of pipes laid by the owner of a field adjoining a highway from a ditch bordering the highway to a disused gravel pit in the field for the purpose of supplying water to cattle (*Croysdale* v. *Sunbury-on-Thames U. D. C.*, [1898] 2 Ch. 515; 62 J. P. 520). A drain was made by the owner of a quarry for the purpose of collecting and carrying off surface water coming on to his land and preventing it from running over the quarry. By means of the drain the quarry could be more economically and conveniently worked than if the water were allowed to spread over it. It was held that the drain was a sewer made for his own profit, and did not vest in the authority (*Sykes* v. *Sowerby U. D. C.*, [1900] 1 Q. B. 584; 64 J. P. 340). This decision was followed in *Phillimore* v. *Watford R. D. C.*, [1913] 2 Ch. 434; 77 J. P. 453, and in *Vare* v. *Joy* (1921), 85 J. P. 29. In the latter case the profit hoped to be realised consisted in the increased value with which owing to the increase in cost of construction the plaintiff would be credited when the sewer was taken over by the local authority. For an earlier decision to the contrary effect, see *Russell* v. *Knight*, cited on p. 79, *post*.

(*e*) The word *proprietors*, which existed in the P. H. A., 1848, s. 43, and was somewhat indistinct in its signification, is here omitted.

(*f*) This purpose is not limited to irrigation under local or private Acts.

Land drainage sewers under special Acts.

A natural stream, fed by natural and artificial drainage of land, belonging to individuals, was cleared out and partially widened and deepened by commissioners acting under a private Inclosure Act, which gave them power to do so at the expense of the proprietors. In its passage to a river it passed through a town and received the drainage of a few houses. It was held that, assuming it to be a sewer, which was very doubtful, it came within this exception, and did not vest in the local board (*R.* v. *Godmanchester L. B.* (1866), L. R. 1 Q. B. 328; 30 J. P. 164).

A railway company, whose special Act incorporated the Railways Clauses Consolidation Act, 1845, constructed land drains for the purpose of conveying surface water from lands adjoining the railway, and these drains were, without the knowledge of the company, used by a rural sanitary authority to convey sewage from certain houses within their district. It was held that the drains were sewers, but that they were within this exception, and did not vest in the authority (*L. & N. W. Rail. Co.* v. *Runcorn R. D. C.*, [1898] 1 Ch. 561; 62 J. P. 643). A railway company will, therefore, be responsible for cleansing such sewers, so as to abate any nuisance arising in them.

Drainage boards under the Land Drainage Act, 1861, are constituted by Provisional Order; and such an Order when confirmed by Parliament is to be "deemed to be a public general Act of Parliament" (s. 64 (6)). Whether it is nevertheless "local" within this provision, has never apparently been discussed; but reference may be made to *R.* v. *London C. C.*, [1893] 2 Q. B. 454; 58 J. P. 21.

(*g*) See further the saving contained in s. 327, *post*.

"Combined" and "single" private drains.

(*h*) The case of *Bateman* v. *Poplar District Board of Works* (1886), 33 Ch. D. 360, and other cases cited on p. 33, *ante*, were decided with reference to provisions in the Metropolis Management Acts, which have no exact parallel in the P. H. A., 1875. See, however, the provisions of the P. H. A., 1890, s. 19, *post*. Cases relating to the question whether a wrongful or surreptitious connection of one drain with another prevents the latter vesting in the local authority as a sewer have already been noticed in the note under s. 4, at p. 31, *ante*.

Vesting and divesting of sewers.

A line of pipes laid in a new street as a "sewer" therefor in accordance with plans approved by the authority, vests in them upon completion, at any rate as soon as it is approved and authorised to be covered in, although no houses have been built to connect with it; and the authority may under s. 16 proceed to link it up by another new sewer to their general system (*Turner* v. *Handsworth U. D. C.*, [1909] 1 Ch. 381; 73 J. P. 95; and see p. 28, *ante*).

As to the liability of a local authority for damages arising out of the negligent construction of a sewer vesting in but not constructed by them, see *Morris* v. *Mynyddislwyn U. D. C.*, [1917] 2 K. B. 309; 81 J. P. 261.

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The question whether the provision in the text as to vesting has been rendered inoperative as to a "single private drain" by virtue of the P. H. A., 1890, s. 19, was considered by WARRINGTON, J., who held that the last-mentioned section does not divest from an authority that which under the P. H. A., 1875, is a sewer. See *Pemsel and Wilson* v. *Tucker*, [1907] 2 Ch. 191; 71 J. P. 547, and also *Kingston-upon-Hull Corporation* v. *N. E. Rail. Co.*, *ante*, p. 46.

It appears, also, that, as a general rule, when once a sewer has vested, it does not become divested (at any rate, so long as it is used for carrying sewage), because all houses but one are disconnected from it: see *St. Leonard, Shoreditch (Vestry of)* v. *Phelan*, *ante*, p. 33, but see *Probyn & Co., Ltd.* v. *Islington Borough Council*, and *Kershaw* v. *Smith & Co., Ltd.*, *ibid.*, and *cf. Rolls* v. *St. George, Southwark (Vestry of)* (1880), 14 Ch. D. 785; 44 J. P. 680.

Effect of the "vesting" provision—

On these words in a private Act, JESSEL, M.R., said: "This is not the case of a mere easement. The barrel of the sewer—that portion of the subsoil—vests in you (the local authority) under the section. . . . It was found under the old law, and it was sometimes held, that the sewer authorities (they were not called sewer authorities in those days) had only an easement, and it was found to be very inconvenient, and consequently in the modern Acts the property in the sewers has been vested in the sewer authorities. That is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement or right of sewerage or drainage, the absolute property in the sewer (which means not only the brick barrel or whatever it may be forming the sewer, but the whole interior of the sewer—that is, the whole of the space occupied by it) is now vested in the sewer authorities. And if the sewer is a large one, it amounts in substance to the whole of the subsoil, and that is absolutely vested in the corporation" (*Taylor* v. *Oldham Corporation* (1876), 4 Ch. D., at p. 411). This statement of the law was approved by WALTON, J., in *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1906] 1 K. B. 294; 70 J. P. 240, affirmed in House of Lords (see *infra*); and by WARRINGTON, J., in *Pemsel and Wilson* v. *Tucker*, *supra*. See also as to the meaning of the words *vest in*, the cases cited upon the same words in the notes to s. 149, *post*, p. 277.

confers limited rights and liabilities.

In *Att.-Gen.* v. *Dorking Guardians* (1882), 20 Ch. D., at p. 604, JESSEL, M.R., said that the vesting of a sewer in a local authority gave them only a modified and limited right of ownership, and did not give them a right to stop up a sewer. But such vesting gives them an interest in land within the meaning of the Lands Clauses Consolidation Act, 1845, s. 68 (*per* Lord ESHER, M.R., in *Birkenhead (Mayor, etc. of)* v. *L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 578; 50 J. P. 84).

The provision that all existing and future sewers within the district of a local authority, subject to the exceptions therein mentioned, "shall vest in and be under the control of such local authority," is not confined to sewers under public roads (*cf. Scott* v. *Dunoon Magistrates*, [1909] S. C. 1093); but it does not make the sewers absolutely theirs so as to render them to all intents and purposes the same as if they were private owners of the sewers. Therefore they are not under all circumstances necessarily liable in respect of nuisances or pollution arising therefrom: see cases in notes to s. 17, *post*, especially *R.* v. *Staines L. B.*, and cases cited therewith on p. 69, and *Glossop* v. *Heston and Isleworth L. B.*, and the line of cases following that decision on pp. 67 *et seq.*; see also *Fordom* v. *Parsons*, and succeeding cases on p. 51, *post*. They can, without joining the Attorney-General, and without alleging special damage, maintain an action for a declaration as to their rights against a person who misuses their sewers, *e.g.*, who discharges noxious matter into a storm-water gully (*Harwich Corporation* v. *Brewster* (1901), 17 T. L. R. 274).

Rateability of sewers.

It has now been declared by the House of Lords that sewers, whether over ground or underground, are rateable whenever the occupation of them is "valuable" within the meaning of the authorities upon rating (*West Kent Main Sewerage Board* v. *Dartford Union*, [1911] A. C. 171; 75 J. P. 305, where the earlier cases are discussed); for the similar rule in Scotland, see *Aberdeen Assessor* v. *Aberdeen Corporation*, [1913] S. C. 712. The general rule deducible from the authorities on rating appears to be that where a public body have a duty to perform which necessitates the occupation of land, their occupation of any particular piece of land for the purpose of performing that duty is "valuable" to them; and, even though they happen to own it, they must be regarded as possible tenants. It would seem that

the cost of construction is, as a rule, the only available basis for valuing sewers. *Cf. Water of Leith Commissioners* v. *Midlothian Assessor*, [1914] S. C. 664. **Note to Section 13.**

Section 34 of the Finance Act, 1921, provides :—

(1) Income tax shall not be charged in respect of a sewer vested in a local authority, in the United Kingdom. Income tax on sewers.

Provided that the foregoing exemption shall not extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer.

(2) In this section—

The expression "sewer" means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health ;

The expression "local authority" means a public body having power under any enactment relating to the public health to construct and maintain sewers.

Previous to the passing of the above Act, sewers were assessable to Income Tax under Schedule A. of the Income Tax Act, 1842. Sewers vested in the Public and out of which no profits were made were assessable under Schedule A., No. I., of that Act, whilst Schedule A., No. III., applies to properties therein specified when such properties are used as trading concerns for the purpose of earning profits. See, however, *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1907] A. C. 264 ; 71 J. P. 425, and *Inland Revenue* v. *Edinburgh Magistrates*, [1907] S. C. 1233.

(*i*) This was a new provision, required to meet the action of local authorities in neighbouring districts, under ss. 28 and 285, as well as the case of special private Acts which provide for the sewerage of extensive districts. It will be observed that it applies both to sewers already constructed at the time of the passing of the Act, and to sewers thereafter to be constructed. Sewers vested in other bodies.

14. Any local authority may purchase or otherwise acquire (*a*) from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings works materials or things belonging thereto), within their district and any person may sell or grant to such authority any such sewer right or property belonging to him ; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right or property sold was subject to. Power to purchase sewers.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right (*b*) to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made.

(*a*) These words, which were new in 1875, enable an authority to accept the gift of a sewer, as, for instance, where it was made for private profit but the landowner gives it to the authority. Before purchasing a sewer the authority should assure themselves that it has not already become vested in them under s. 13. In a case in which an authority proposed to purchase sewers and sewage disposal works constructed by private persons, the L. G. B. held that the sewers had already become the property of the authority, and that consequently there was nothing to purchase. With regard to the sewage works, however, the Board did not consider that these were "buildings, works, materials and things belonging" to the sewers, and a loan for their cost was sanctioned. See, however, *Minehead L. B.* v. *Luttrell* and other cases, *ante*, p. 46.

(*b*) There is no limit to the extent of this right. The P. H. A., 1848, s. 44, applied only where a perpetual right had been acquired.

Section 15.

Maintenance and making of sewers.

15. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.

This is a duty upon the local authority. As to the Power of the M. of H. to enforce performance thereof, see s. 299, *post*.

Effect of the P. H. A., 1890, s. 19.

The duty hereby imposed on an authority to keep in repair the sewers vested in them is not transferred by s. 19 of the P. H. A., 1890, *post*, even in cases to which that section is applicable. "If it had been intended by that section to repeal the existing liability, the Act would have been differently drawn, and would have contained some express provision, the effect of which would have been to alter the Act of 1875. As the Acts stand, they leave the general liability untouched. Section 19 of the Act of 1890 gives power to make an application under s. 41 of the Act of 1875 in certain cases and entitles the local authority to recover the expenses incurred by them. Section 41 entitles the local authority, on application made to them, to enter the premises, and have the necessary work done; but that right arises only where a written application is made, stating that the drain is a nuisanec or injurious to health": *per* WRIGHT, J., in *R.* v. *Hastings (Mayor, etc. of)*, [1897] 1 Q. B. 46; 60 J. P. 759. See also *Pemsell and Wilson* v. *Tucker*, *ante*, p. 48.

To what sewers the duty extends.

From the cases already cited in the notes to s. 4, *ante*, p. 26, it will be observed that the obligation of the authority to repair sewers, extends to all sewers except such as are not vested in them by reason of their being within the exceptions mentioned in s. 13, *ante*, p. 45. It extends, therefore, to sewers which have become such by reason of the acts of private persons on private land, and sometimes even to cases in which the drain of one house may have become a sewer by reason of the unauthorised connection thereto of a drain from another house. As to the liability of a local authority to maintain a sewer which is dangerous by its position, see *Morris* v. *Mynyddislwyn U. D. C.*, *ante*, p. 47.

Right of access to repair, implied or express.

For the purposes of repair, the authority have an implied right of access, but that right is limited to such access as may be reasonably necessary for enabling the repair to be done. The plaintiffs, in 1843, under a local Act, constructed a sewer on land, part of which had been bought by the defendants, a railway company, but had not then been used for their works. Part of the remainder was subsequently bought by the defendants. No part of the land ever belonged to the plaintiffs. The local Act not only authorised the plaintiffs to make the sewer, but vested it in them, with a duty to repair it, without, however, giving them any express right of access thereto. In 1863 the defendants, under their special Act, constructed an embankment over the sewer, which made less easy, but did not prevent, access to it. The plaintiffs being obliged afterwards to repair, and having incurred extra expense in doing so in consequence of the embankment, claimed compensation from the defendants under the Lands Clauses Consolidation Act, 1845, s. 68, and the Railways Clauses Consolidation Act, 1845, s. 6, for injuriously affecting their interest in the sewer. It was held by the Court of Appeal that as a right of access to the sewer had not been expressly given by the local Act, but had to be implied, the right of access which ought to be implied was not any particular mode of access, but such only as was reasonably necessary for enabling the repair of the sewer to be done; and that, as such access had not been prevented by the embankment, but only rendered less easy and convenient, the plaintiffs had no right to compensation (*Birkenhead (Mayor, etc. of)* v. *L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 572; 50 J. P. 84). See this case distinguished where express right of access was given (*Thurrock Grays, etc. Sewerage Board* v. *Goldsmith*, 79 J. P. 17).

See s. 26, *infra*, which to some extent safeguards an authority's right of access. An owner of land through which a sewer was laid agreed with the authority that he would not build so as to prevent reasonable access to the sewer. His successor in title having built a stable over the sewer, an action was brought to compel the

pulling down of the same: DENMAN, J., found as a fact that the building did not substantially interfere with the authority's right of access, and dismissed the action (*Sandgate L. B.* v. *Leney* (1883), 25 Ch. D. 183 n.).

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How far duty can be shifted to individuals by "nuisance" proceedings.

It was held in *Fordom* v. *Parsons*, [1894] 2 Q. B. 780; 58 J. P. 765, *sub nom.* *Wycombe Union* v. *Parsons*, 71 L. T. 428, that where an authority have admittedly not discharged this obligation to repair a sewer, it is not competent for them to exercise the powers conferred by ss. 94 to 96, *post*, pp. 176 *et seq.*, so as to evade the performance of the obligation, and, in effect, transfer it to those for whose protection the authority exists. The respondent and others from time to time connected their water-closets with a drain, without the knowledge of the authority. This drain had been an open drain taking surface water from a highway and sink-drainage from houses near it, but no water-closet drainage, and in 1863 it was covered up by the authority, the expenses being paid by a special rate. The respondent's water-closets had been connected with the drain for more than twenty years. The authority had made no byelaws or regulations as to the mode in which communications between drains and sewers were to be made, nor had they carried out any system of drainage for their district, cesspools or earth-closets being generally used. The authority having instituted proceedings against the respondent for the abatement of a nuisance at the place where the drain emptied into a ditch, the justices dismissed the complaint, and on appeal their decision was upheld (*ibid.*). In an earlier Irish case a householder was summoned for causing her water-closet to discharge into a water channel under the main street of N., causing a nuisance. The channel was, from its size and from having a gravel bottom, unsuited to receive fæcal matter, and was only intended for surface water. There was no other sewer in N., but the authority had made arrangements for carting away sewage weekly. There was no nuisance on the defendant's premises; but the channel was in an offensive state, and a justice ordered the defendant to disconnect the water-closet, so as to prevent any discharge from it into the channel. It was held that the justice's order was wrong (*Molloy* v. *Gray* (1889), 24 L. R. Ir. 258). DOWSE, J. (dissenting), held that, as the channel was obviously unfit to take sewage, the connection with it was wrongful, and did not justify the defendant's acts. The other two judges apparently considered that, having regard to the lapse of time and other circumstances, the authority could not dispute the legality of the connection. See also *Kirkheaton L. B.* v. *Beaumont* and other cases, on p. 30, *ante*.

But in a later case (*Wincanton R. D. C.* v. *Parsons*, [1905] 2 K. B. 34; 69 J. P. 242), a Divisional Court held that even if the drain there in question into which the defendant had discharged sewage (thus causing a nuisance at a fracture in the drain) had been a sewer, the defendant ought nevertheless to have ceased sending down sewage because this was the real cause of the nuisance, and was therefore responsible as the person by whose act the nuisance arose, and that he could afterwards have taken proceedings against the local authority to have the question of liability to repair decided. According to the report in the L. R. (not, however, the J. P., where the judgment is more fully reported), KENNEDY, J. (speaking with regard to proceedings for a penalty under s. 95), went further and said: "If in such proceedings the local authority bonâ fide dispute their obligation to repair, the justices cannot inquire into the question upon whom the obligation lies, and, if satisfied that but for the defendants' discharge of sewage into the pipe the nuisance would not have arisen, are bound, I think, to deal with him as the person by whose act the nuisance was caused." It is perhaps more than doubtful whether this statement of the law is correct, for the existence of an obligation on the part of a defendant involves a finding that a particular line of pipes is *a drain* in such a condition as to be a nuisance (see s. 91) and such a finding involves a determination whether the line of pipes is in fact a drain or a sewer. It is submitted that the decision in *Fordom* v. *Parsons*, *supra*, still holds good where it is proved, or must be inferred, that a connection has been lawfully made in accordance with s. 21, *post*, p. 78.

Duty in case of new building estate.

This section does not require an authority to provide sewers in anticipation of the future requirements of their district, or to enable a landowner to develop his land for building purposes. When building estate is laid out, the owners may

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have to provide temporary means of disposing of the sewage and drainage. But when houses are actually built to such an extent as to necessitate a scheme of drainage, the duty imposed by the section will arise, and the authority will have to cause the necessary sewers to be made. So far as the new streets on the estate are concerned, that duty may be fulfilled by causing them to be sewered at the expense of the frontagers under s. 150, but the outfall to receive the sewage from such street sewers must be provided by the authority (*R.* v. *Tynemouth R. D. C.*, [1896] 2 Q. B. 451; 60 J. P. 804). And see *Kinson Pottery Co.* v. *Poole* (*Mayor, etc. of*), [1899] 2 Q. B. 41, 49; 63 J. P. 580. In the case of rural authorities, however, the L. G. B. hold that under ordinary circumstances all necessary sewers, whether in public or private streets, should be provided at the cost of the contributory place, and they consequently withhold from the rural authority such of the powers of s. 150 or similar enactments as enable an urban authority to enforce the sewering of private streets at the cost of frontagers. The Board have recently made some exceptions to their rule in the case of parishes which have an urban character, and already possess a main drainage scheme.

Obligations as to trade effluents:

Doubt has existed as to whether the above section imposes upon a local authority the duty of providing sewers of sufficient capacity to receive trade effluents.

The effect of an opinion given by the law officers to the L. G. B. (see the Third Report of the Royal Commission on Sewage Disposal, at p. xi) is that a local authority are not generally bound under the P. H. A., 1875, to provide such sewers as may be necessary to carry off all the trade effluents and liquid refuse coming from manufactories in their district, and that their obligations in this respect are defined by the Rivers Pollution Prevention Act, 1876, s. 7, and are subject to the limitations stated in that section, and, further, that the obligation under the Act of 1875 of providing sewers is confined to the ordinary requirements of the district, that is to say, that authorities are only bound to provide for sewage in the ordinary sense of the term, including foul water produced in the ordinary course of domestic management, and surface water.

In *Peebles* v. *Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 384; 61 J. P. 166, CHARLES, J., decided that the duty of a local authority under s. 15, *supra*, extended to the making of sewers sufficient to carry off not merely the ordinary sewage, but also the effluents from manufactories in the district, provided they were not injurious to health. The case was taken to the Court of Appeal ([1897] 1 Q. B. D. 625; 61 J. P. 308), and subsequently to the House of Lords (*sub nom. Pasmore* v. *Oswaldtwistle U. D. C.*, [1898] A. C. 387; 62 J. P. 628), being there decided on another ground, viz., that the duty of an authority under s. 15 to provide sewers is only enforceable by complaint to the L. G. B. under s. 299. On the other hand, certain observations made by Lord HALSBURY therein at [1898] A. C. 396, support the opinion of the law officers. It appeared on the pleadings, or at all events was a necessary inference from them, that when the plaintiff's factory was put up in the respondents' district the sewage system was enough for ordinary purposes, and their counsel argued that in such a case the factory owner could not compel the respondents to remodel their whole drainage in order that it might carry away the factory refuse. Lord HALSBURY, referring to such argument, said: "I confess, however, that I am wholly unable to see the answer to the argument at present, if the facts are what the pleadings appear to admit them to be, because, instead of the Rivers Pollution Prevention Act having, as Mr. COZENS-HARDY ingeniously argued, reference to a different subject-matter, this appears to me to be the very subject-matter that the Legislature was dealing with there. The preamble of that Act recites that it is expedient to make 'provision for the prevention of the pollution of rivers,' and, having that object before it, the Legislature has obviously intended to look at the system by which the public health is preserved in respect of sewers and drains. What does it there provide? It provides that there shall be an outlet in some form or other for what I may call manufactory refuse; but, contemplating the case which might readily arise where some manufacturer would be very glad to throw upon the rates the necessity of getting rid of his own refuse, it provides also, with reference to that obligation to get rid of the refuse, that where the drainage system of a district is 'only sufficient

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for the requirements of their district,' there shall not be an obligation to get rid of the refuse of a manufacturer who ought to get rid of the refuse which he is himself creating. That seems to me to be a very intelligible provision, and a very just one; otherwise a manufacturer might come to some very small district, might establish a large manufactory there which would involve, with reference to the law of nuisance, the necessity of getting rid of the refuse created by that manufactory, and there would be no individual obligation upon the person creating it. But if this section in the Public Health Act could be applied in the way it is sought to apply it here, nothing could be easier than for a manufacturer to establish a manufactory for his own profit and throw upon the rates, paid by all the inhabitants, who have no concern with the manufactory at all, the necessity for providing for that great source of expense to the manufacturer of getting rid of his own refuse. It seems to me, therefore, that the Legislature very wisely and prudently provided against such a condition of things as that; and if that condition of things exists here as a fact, as upon the pleadings I think it is admitted that it does, I see no answer to the argument that the section in question would not entitle anybody to call upon the particular district to provide for the extra amount of refuse created by the manufacturer." The same view is supported by the judgments in *Brook, Ltd.* v. *Meltham U. D. C.*, [1908] 2 K. B. 780; 72 J. P. 409. See also *Butterworth and Roberts* v. *West Riding of Yorkshire Rivers Board*, [1909] A. C. 45; 73 J. P. 89, *per* Lord MACNAGHTEN.

Probably no general obligation;

The L. G. B. have acted on the view of the law officers. In their Annual Report for 1898–9, at p. cxx, with reference to a complaint by a firm of mill-owners that a rural district council were in default in providing sewers, they say: "We caused a local inquiry to be held by one of our inspectors with regard to the complaint, and we found that the sewers, though large enough for the conveyance of ordinary domestic sewage, were not of sufficient capacity for the reception of trade refuse. We took the opinion of the law officers of the Crown on the case, and they advised that the district council, under the circumstances, had not made default within the meaning of the Act." In the third Report (1903) of the Royal Commission on Sewage Disposal the commissioners (p. xvii) recommend "that the law should be altered so as to make it the duty of the local authority to provide such sewers as are necessary to carry trade effluents as well as domestic sewage, and that the manufacturer shall be given the right, subject to the observance of certain safeguards, to discharge trade effluents into the sewers of the local authority if he wishes to do so."

As to the right to discharge "trade effluents" into existing sewers, see the notes to s. 21, at p. 78, *post*.

Obligation as to alkali works.

Additional legislation exists as to certain classes of manufacturers, viz., owners of alkali works. By s. 3 (3) of the Alkali, etc. Works Regulation Act, 1906: "On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or watercourse into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act. (4) Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section."

Remedy for neglect of duty:

It was formerly considered that the duty to construct and repair sewers could be enforced by *mandamus*. *Cf. In re Maidenhead L. B.* (1855), 26 L. T. (o.s.) 104; *Ex parte Parsons* (1858), 22 J. P. 68; *R.* v. *Epsom Union* (*Guardians of*) (1863), 8 L. T. 383; *R.* v. *Tottenham L. B.* (1893), 9 T. L. R. 414. It is now, however, established that "a default" in providing sufficient sewers or in the maintenance of existing sewers (see s. 299, *post*), can be met only by the

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complaint to L. G. B.

no *mandamus*, as a rule, no action.

special remedy given by that section, *i.e.*, an appeal to the M. of H. Thus, a *mandamus* will not be granted to compel an authority to provide sufficient sewers (*Pasmore* v. *Oswaldtwistle U. D. C.*, p. 52, *ante*; see also *Harrington* (*Earl*) v. *Derby Corporation*, [1905] 1 Ch. 205; 69 J. P. 62, and *Brown* v. *Dunstable Corporation*, p. 68, *post*), nor will an action for damages lie in respect of mere failure to do so (*Robinson* v. *Workington* (*Mayor, etc. of*), *infra*). It is not, however, easy to say precisely what grounds of complaint as to the management of existing sewers are covered by the word "maintenance" in s. 299, and what grounds will, in spite of that section, support an action; upon this point the decisions appear to be somewhat conflicting. In *Stretton's Derby Brewery Co.* v. *Mayor, etc. of Derby*, p. 76, *post*, the plaintiffs' complaint was that a sewer originally of sufficient size had become insufficient owing to many new houses being connected with it, and that in wet weather it consequently became surcharged, with the result that sewage was forced back along the plaintiffs' drains and into their cellars. No argument was based on s. 299, but the plaintiffs failed, because under the special circumstances the defendants—who were bonâ fide considering a new sewerage system—were held to have been guilty of no negligence or want of reasonable care and diligence. It appears, however, to have been admitted that an authority who allow a sewer to be regularly surcharged do not "keep it" so as not to be a nuisance within the meaning of s. 19, *post*, and would therefore be liable in damages if there was negligence. In the next case a sewer had been sufficient for the district in which the plaintiff's houses were situated, until a number of new houses were built and drained into it. The sewer thereby became inadequate to carry off all the sewage, and some of it was bayed back and overflowed into the plaintiff's houses, causing damage. It was held that the plaintiff had no right of action to recover damages, the essence of his complaint being that the defendants had failed to provide sufficient sewers, which was an act of nonfeasance only and one for which s. 299 provided a remedy. It was also apparently held that the words "keep so as not to be a nuisance" in s. 19 had no application to the facts (*Robinson* v. *Workington* (*Mayor, etc. of*), [1897] 1 Q. B. 619; 61 J. P. 164). It has been held, however, that the diversion, by an authority in the execution of their statutory powers, of sewage from one drain or sewer into another already overcharged with sewage, whereby damage is occasioned to an occupier of premises, is not a mere act of omission in the performance of duties imposed by this section, and, therefore, only a subject for compensation under s. 308, but is the commission of a legal wrong in respect of which the occupier can maintain an action (*Dent* v. *Bournemouth* (*Mayor, etc. of*) (1897), 66 L. J. Q. B. 395). In connection with the foregoing decisions a colonial case may be noticed. A local authority converted part of a watercourse into a sewer and subsequently a number of subsidiary channels were made by them or by their leave for carrying water and sewage into this sewer. After heavy rains the sewer became choked, and overflowed, covering certain low-lying lands with sewage and slime. It was held that the authority had been guilty of negligence, and were liable in damages, it being no defence to say that before any work was done to the watercourse, the land in question was sometimes flooded with storm water from it, or that the work originally done was sufficient at that time, since now that additional channels had been constructed it was clearly insufficient, flooding having occurred on previous occasions. *Per* Lord MACNAGHTEN: "As for negligence, it is difficult to imagine a more conspicuous example of negligence than is shown by repeatedly pouring offensive stuff into a receptacle or channel proved over and over again to be insufficient to hold and pass it on. They might just as well pour this stuff directly on the plaintiff's land" (*Hawthorn Corporation* v. *Kannuluik*, [1906] A. C. 105). See also a somewhat similar Scotch case, *Hanley* v. *Edinburgh Corporation*, [1912] S. C. 1199. In another case an action was brought to recover damages for injury to a wall by the overflow from a sewer vested in the defendants. In times of storm the water filled the sewer, and was forced up a branch drain into a brook adjoining the wall, which was thereby damaged. The jury found that the defendants were not negligent in not having sufficient sewers to carry off the sewage, that the overflow arose from an extraordinary storm which could not have been relieved by ordinary care, but that the defendants should, having regard to a previous overflow in the preceding year, have had storm openings put in the sewer. The Court of Appeal held that what the plaintiff was seeking to compel the defendants to do amounted to an

alteration of, or improvement in, their system for the purpose of carrying off storm water, and that the only remedy was by complaint to the L. G. B. (*Jones* v. *Barking U. D. C.*, 15 T. L. R. 92). **Note to Section 15.**

In *Whitfield* v. *Bishop Auckland U. D. C.*, Times, November 22nd, 1897, an action was brought to recover damages for negligence in failing to maintain and repair a sewer. The jury found that the sewer was badly constructed by reason of defective joints; that it was improperly and negligently maintained, because the defendants did not open out the whole of it on an occasion when they partially repaired it, and that the plaintiff's houses had been injured by the escape of water from the sewer. On these findings, WRIGHT, J., gave judgment for the plaintiff; and an appeal failed (W. N. (1898) 37).

Baron v. *Portslade U. D. C.* (p. 75, *post*), was a successful action for breach of the duty to "cleanse" an open sewer in accordance with s. 19; Lord HALSBURY, L.C., in delivering the judgment of the Court of Appeal, said as to s. 299: "I agree that the *maintenance* of a sewer is not the same thing as that which it is the authority's duty to do by virtue of s. 19. . . . Section 299 does not, in my opinion, touch the duty of the authority to use proper diligence in the *management* of existing sewers, and I cannot see either in the section or in the cases cited anything to take away the right of action of a person who has sustained an injury through the neglect of the authority." In *Att.-Gen.* v. *Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1, a watercourse had been culverted and converted into a sewer. The brickwork of the culvert was in bad repair, and when the tide dammed the sewage back it was constantly forced through holes and cracks on to land of the relator plaintiff. He was held entitled to damages. It is not clear whether this decision was based on the view that s. 299 has no references to the physical condition of a sewer (*cf. Baron* v. *Portslade U. D. C.*; *Harrington* (*Earl*) v. *Derby Corporation*, *supra*), or on the view (see *per* SWINFEN EADY, J., at [1911] 2 Ch. 507) that s. 299 gives no remedy in damages; the latter seems inconsistent with *Robinson* v. *Workington Corporation*, *supra*.

Remedy in metropolis.

It should be mentioned that there is no section in the Metropolis Management Acts corresponding to s. 299, *post*. It has, therefore, been held that *mandamus* will lie to compel performance of the duty imposed by the corresponding sections of these Acts. See *R.* v. *St. Mary, Islington*, Times, August 3rd, 1898; *R.* (or *Lee District Board*) v. *London C. C.* (1899), 64 J. P. 20; 82 L. T. 396; *St. Matthew. Bethnal Green* (*Vestry*) v. *London School Board*, [1898] A. C. 190; 62 J. P. 532. In an earlier case it was held that the proper form of remedy was not a motion for a prerogative writ of *mandamus*, but an action for a declaration and a *mandamus* (*R.* v. *St. Giles, Camberwell* (*Vestry of*) (1897), 66 L. J. Q. B. 337; 61 J. P. 217).

Section does not authorise commission of a nuisance.

Although an authority may under s. 18, *post*, p. 74, cover or pipe in a watercourse which has in fact become a "sewer," the present section does not entitle them to arch over a watercourse containing pure water, with a view to its afterwards carrying sewage, for the Act does not authorise the commission of a nuisance (*Att.-Gen.* v. *Hackney L. B.* (1875), L. R. 20 Eq. 626: see also *Pentpey* v. *Lynn Paving Commissioners* (1865), 12 L. T. 818). Nor may they construct a sewer which will cause a nuisance by its discharge into a stream (see cases in notes to s. 17), or on to land (see *Brown* v. *Dunstable* (*Mayor, etc. of*), p. 68, *post*; *Lamacraft* v. *St. Thomas' R. S. A* (1880), 44 J. P. 441; 42 L. T. 365).

Powers for making sewers—

16. Any local authority may carry any sewer through across or under any turnpike road, or any street (*a*) or place laid out as or intended for a street, or under (*b*) any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (*c*) (if on the report of the surveyor it appears necessary (*d*)), into through or under (*e*) any lands whatsoever within their district (*f*).

Section 16. They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority (*g*)) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

in streets, public or private;

(*a*) See the definition of this word in s. 4, *ante*, p. 15. An authority were held entitled to lay a sewer in a private road (*Taylor* v. *Corporation of Oldham* (1876), 4 Ch. D. 395; followed in *Hill* v. *Wallasey L. B.*, p. 132, *post*. And see *Maddock* v. *Wallasey L. B.* (1886), 55 L. J. Q. B. 267; 50 J. P. 404).

The words "through across or under," leave it to the discretion of the authority whether they will carry the sewer above or under a street, the legislature assuming that they will carry it in such manner as not to interfere with the traffic (*per* JESSEL, M.R., in *Roderick* v. *Aston, L. B.* (1877), 5 Ch. D. 328; 41 J. P. 516).

(*b*) Not "into, through, or across" (*Roderick* v. *Aston L. B., supra*).

in private lands;

(*c*) These words were wanting in the P. H. A., 1848, s. 45, and it was left vague to whom the notice was to be given. Here it is provided that notice is to be given to the owner (see s. 4, *ante*, p. 8, for this definition), or to the occupier. The interposition of these words has given some awkwardness to the parenthesis; but the report of the surveyor relates not to the notice, but to the necessity for passing through the lands. An injunction may be granted to restrain an authority from constructing a sewer through private lands, on the ground that reasonable notice in writing has not been given, and that the surveyor has not reported the construction to be necessary as required by this section (*New River Co.* v. *Ware Union R. S. A.* (1883), L. J. Notes of Cases, p. 20; *Lewis* v. *Weston-super-Mare L. B., infra*). But if the work was done with the owner's assent, he will not succeed in obtaining an injunction or damages merely because the preliminary requirements of the section have not been complied with: see *Long* v. *Fulham Vestry* (1898), 47 W. R. 56. Nor will he as a rule succeed on technical grounds when he has had full knowledge of the authority's proposals. Thus, in one case, an interlocutory injunction was applied for on the ground that reasonable notice had not been given and that the report of the surveyor did not show it to be necessary to carry the sewer through the plaintiff's land. CHANNELL, J., refused an injunction, holding that if there were any defects in the notice or report they could easily be remedied, and the Court of Appeal also refused to interfere (*Hutchings* v. *Seaford U. D. C.* Times, November 11th, 1898). The action came on for trial, after the sewer had been laid, and the plaintiff asked for a mandatory injunction to remove it. It appeared that it was constructed across a field, and that there had been long negotiations between the parties, and in these circumstances NORTH, J., said that it did not matter whether a week or six days' notice was sufficient, and that as it had been shown that the sewer was necessary, judgment must be given for the defendants (Times, November 6th, 1899); *cf.* also *Cleckheaton U. D. C.* v. *Firth*, on p. 95, *post*; *Montgomerie & Co.* v. *Haddington Corporation*, [1908] A. C. 170, and *Scott* v. *Dunoon Magistrates*, [1909] S. C. 1093, where a purchaser of land failed to compel the removal of a sewer, the existence of which was unknown to him at the time of purchase. It was there held that the provision for giving notice was for the owner's protection, and could be waived by him.

Report of surveyor, and notice, necessity for;

Sufficiency of notice.

As to the authentication and service of the notice, see ss. 266, 267, *post*. For forms of report and notice, see Encyclopædia of Forms and Precedents, Vol. X., pp. 511, 512. A notice, specifying the object to be the construction of a sewer of certain dimensions, to enter at a certain spot and to go in an oblique direction from that spot without a map was held to be a reasonable one (*Cleckheaton I. S. H. Society* v. *Jackson* (1866), 14 W. R. 950). The notice may be withdrawn at any time before the commencement of the work (*Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279; 15 T. L. R. 275). Perhaps, however, if the landowner has in consequence of the service of the notice sustained any damage, he may, notwithstanding its withdrawal, recover compensation for such damage (*ibid., per* A. L. SMITH, L.J.).

Discretion of authority.

(*d*) In *Derby* (*Earl*) v. *Bury Commissioners* (1868—1869), L. R. 3 Ex. 121; 4 Ex. 222; 33 J. P. 424, the Exchequer Chamber ruled that "the necessity for

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making a new sewer being ascertained as a matter of fact, it was for the local authority to exercise their judgment in what direction that new sewer should be made through the adjoining land, and so long as they exercise an honest discretion without misconduct or negligence, they are not liable to have their judgment overruled in a court of law"; *cf. Stroud* v. *Wandsworth Board of Works*, [1894] 1 Q. B. 64; 58 J. P. 40.

The provisions of this section are extended to the laying of water mains by s. 54, *post*, p. 128. In December, the surveyor of the defendants, an urban authority, died. In January they, by resolution, appointed A. P., an engineer in their employment, "surveyor to the board until a further permanent surveyor be appointed." In March, A. P. reported to the defendants that it was "desirable and advisable" that their water main should be carried in a particular direction from one point to another, and that it would be "necessary" to lay it through land belonging to the plaintiff. This report was signed "your surveyor, A. P." Four days after its date X. Y. was duly appointed surveyor to the defendants, and A. P., who was a candidate for the office, was retained in their service as waterworks engineer. The report was considered and adopted by the board in April, and in May a notice in pursuance thereof was served on the plaintiff that the defendants intended to carry their main through a part of his lands. Upon motion made in an action by the plaintiff for an injunction to restrain the defendants from so doing it was held,—First, that the word "necessary" must be construed as meaning "necessary for the efficient discharge of the duty in the way most for the benefit of the public";—Secondly, that upon the words of s. 16 the person to determine the necessity was the surveyor; and that if the court found that he had exercised his judgment and come to a conclusion in good faith, it ought not to interfere, even although other courses were shown to be practicable by which entry on private lands might be avoided; and, Thirdly, that "the surveyor" mentioned in s. 16 must, in the case of an urban authority, be the fit and proper person duly appointed to be the surveyor under s. 189 of the Act, and no other; that A. P. was not "the surveyor" of the defendants within the meaning of ss. 16 and 189; and that, as the report on which the proceedings of the defendants were founded was not the report of "the surveyor," the plaintiff was entitled to an interlocutory injunction (*Lewis* v. *Weston-super-Mare L. B.* (1888), 40 Ch. D. 55); *cf. R.* v. *Halkett*, [1910] 1 K. B. 50; 74 J. P. 12, where it was held that an officer appointed to act as a chief constable's deputy during the latter's holiday, could not give the written consent required for a prosecution under the Sunday Observance Act, 1871. The *Weston-super-Mare Case, supra*, was distinguished in *Kendal* v. *Lewisham Borough Council* (1903), 67 J. P. 236; 19 T. L. R. 384, KEKEWICH, J., holding that an order under the Metropolis Management Act, 1855, s. 105, is valid if made by an acting surveyor of the council, on the ground that in s. 105 the expression is "surveyor for the time being." An appeal was settled ((1903), 20 T. L. R. 21).

In *Brown* v. *Kirkcudbright Magistrates* (1905), 8 F. 77, a surveyor reported that a certain course for a proposed sewer "seems the best and most practical way of taking it . . . to carry out this plan it is necessary" to carry the sewer across certain lands:—*Held*, under a very similar provision, to be a sufficient report.

Extent of authority's powers: works authorised.

(*e*) Under this section a local board proceeded to carry a sewer across the plaintiff's pleasure grounds, on such a level that the bottom of the sewer would be only slightly below the surface, and a permanent embankment about six feet high would be made. The Court of Appeal held that they might do so, and that the Act did not confine them to carrying a sewer underground (*Roderick* v. *Aston L. B.* (1877), 5 Ch. D. 328; 41 J. P. 516), followed in *Morris* v. *Mynyddislwyn U. D. C.*, [1917] 2 K. B. 309; 81 J. P. 261. A manhole is part of the sewer, and may be made without purchasing land for the purpose, the owner of the land being entitled only to compensation for the damages arising from making it (*Swanston* v. *Twickenham L. B.* (1879), 11 Ch. D. 838). But an engine house with pump and machinery erected partly above and partly below the level of the ground, for lifting and forcing sewage along a rising main from one part of a district to another where there is a common outfall, is not part of a sewer for the purposes of this section, but is a work for the purpose of receiving and otherwise disposing of sewage within s. 27, *post*, p. 89, for which the necessary land must be purchased or leased (*King's College, Cambridge* v. *Uxbridge R. D. C.*,

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[1901] 2 Ch. 768). An iron pipe laid temporarily to carry off effluent water from sewage works is a sewer within this provision (*Tottenham L. B.* v. *Button* (1886), 2 T. L. R. 828). It has been doubted whether an "overflow" sewer is a sewer for all purposes within the meaning of the Act (see *Leeds and District Worsted Dyers' and Finishers' Association* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480; 5 L. G. R. 72), but it is submitted that such a sewer is a sewer within the meaning of s. 16.

If an owner of land refuses to allow an authority to enter for the purpose of making a sewer under this section, it would appear that they ought to commence an action for a declaration of their right to enter, for it seems that s. 305 does not enable them to obtain from a court of summary jurisdiction an order authorising such entry (*per* COCKBURN, C.J., in *Lamacraft* v. *St. Thomas' R. S. A.* (1880), 44 J. P. 441; 42 L. T. 365; and see to the same effect *per* DENMAN, J., in *Wheatcroft* v. *Matlock L. B.* (1885), 52 L. T. 356). "The word 'lands' as used in this section is, by the definition clause (s. 4), extended so as to mean any tenement or hereditament, and obviously includes lands covered with water": *per* LINDLEY, L.J., in *Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291, 301; and see also *Dell* v. *Chesham U. D. C.*, [1921] 3 K. B. 427; 85 J. P. 186. So that the section enables an authority to carry their sewers into streams, etc., subject, of course, to s. 17, *post*, p. 60, and to making compensation under s. 308, *post*. The right is subject also to the limitations imposed by s. 327. See that section and *Thames Conservators* v. *Walton-upon-Thames U. D. C.*, in the notes thereto.

A local authority are liable in an action for damages, and may be restrained by injunction from proceeding under this section, if the proposed sewer would cause a nuisance (*Lamacraft* v. *St. Thomas' R. S. A.*, *supra*).

Sewers under canals and railways:

In carrying sewers under canals and other properties which are the subject of special protective provisions (see ss. 327, 332), an authority must be careful to obtain all requisite consents. Railway property is not mentioned in the sections quoted, but it is desirable that the company should be consulted before a sewer is laid under such property. Where it is proposed to lay a sewer beneath a railway line, the M. of H. require the company's consent before they will sanction a loan for the scheme. In the *Metropolitan Water Board* v. *L. B. & S. C. Ry. Co.*, [1915] 2 K. B. 297; 79 J. P. 337; under a private Act the Board were granted like powers with respect to the laying of water mains and pipes as are exercisable by Local Authorities under the P. H. Act, 1875. Further, the Act provided that the Board shall not without the consent in writing of the railway companies under their common seal purchase or acquire any of the lands or property of the railway companies, but the Board may acquire and the railway companies shall if required grant to the Board an easement or right of constructing and maintaining works on, through, in, under, over, or along such lands and property, the sum to be paid therefor to be settled by agreement or arbitration. It was held that the Board were not bound to acquire or pay for any easement or right of constructing and maintaining the main but were entitled under the above powers to exercise the power of local authorities as to carrying of water mains through lands without acquiring an easement.

lands need not be purchased.

Under the corresponding sections of the Metropolis Management Acts it was held that a sewer might be made, subject to compensation being paid, without actually taking lands under the provisions of those Acts which enable lands to be taken (*North London Rail. Co.* v. *Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; 23 J. P. 515; *Hughes* v. *Metropolitan Board of Works* (1861), 25 J. P. 675; 4 L. T. 318); and the same view has been taken of the corresponding sections of the Public Health (Scotland) Act, 1897 (*Caledonian Rail. Co.* v. *Perth District Committee* (1901), 3 F. 1029). Where a local authority, having power under a local Act to erect and maintain electric cable standards "on, in, over or under any street or road," erected such a standard in the pavement, it was held that their act, although the standard was sunk in the soil to a considerable depth, did not amount to a "taking of land" (*Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135). Under an earlier Act, the surveyor of a local board having reported that it was necessary to make a sewer through N.'s lands, the necessary steps were taken and authority given to the surveyor. N. obstructed the surveyor; and, being summoned before justices for so doing, contended that proceedings ought

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first to have been taken to acquire the land under the Lands Clauses Act. It was held that this was no answer to the summons, as the land need not have been so acquired before the sewer was laid in it (*Thornton* v. *Nutter* (1867), 31 J. P. 419). "It is said that independently of this section they (the authority) have power to purchase land, and that what they are doing is injuring the plaintiffs to such an extent, that it is equivalent to taking the whole of the land. Well, if what is done is equivalent to taking the whole of the land, the plaintiffs will get compensation for the whole of the land" : *per* JESSEL, M.R., in *Roderick* v. *Aston L. B.*, p. 55, *ante*. See also the remarks of the same judge, quoted on p. 48, *ante*. In *Jones* v. *Conway and Colwyn Bay Joint Water Supply Board* (1893), 2 Ch. 603 ; 57 J. P. 501, at p. 608, NORTH, J., said : "I see nothing in Sect. 16 to say that a local authority may not enter upon lands within their district before they have drained a single house and that they cannot do so while they are making the sewers, which, when completed, will effect the draining of the district." As to the power of entry on lands of a railway company see *Metropolitan Water Board* v. *L. B. & S. C. Ry. Co.*, [1915] 2 K. B. 297 ; 79 J. P. 337.

Authority's liability for negligence.

Although the remedy of a person who sustains damage by the laying of a sewer in his lands is to claim compensation under s. 308, *post*, yet an authority are liable in damages to any person who sustains injury by reason of their negligence in laying it. See notes to s. 308, *post*, and cases there cited, especially *Clothier* v. *Webster* (1862), 6 L. T. 461. As to the liability of an authority for the negligence of their contractor in laying a sewer, see cases cited in the notes to s. 265, *post*, especially *Hardaker* v. *Idle U. D. C.*, [1896] 1 Q. B. 335 ; 60 J. P. 196.

Right to support.

An authority making a sewer might or might not, prior to August 25th, 1883, acquire a right to lateral support from owners of adjoining lands (see *Metropolitan Board of Works* v. *Metropolitan Rail. Co.* (1868—1869), L. R. 3 C. P. 612 ; 4 C. P. 192 ; *Roderick* v. *Aston L. B.*, *supra* ; *In re Dudley Corporation*, *infra* ; and *Jary* v. *Barnsley Corporation*, *infra*). Such a right of support might before 1883 have been gained against the owner of the lands in which the sewer was laid, and this might have been taken into account in estimating the compensation to which he was entitled (*per* JESSEL, M.R., in *Roderick* v. *Aston L. B.*, *supra* ; *In re Dudley Corporation* (1881), 8 Q. B. D. 86 ; 46 J. P. 340 ; *Jary* v. *Barnsley Corporation*, [1907] 2 Ch. 600 ; 71 J. P. 468). But since the passing of the Public Health (Support of Sewers) Act, 1883, *post*, an authority cannot acquire any right of support, vertical or lateral, as against the owner of mines, except as in that Act provided (s. 4). It would appear, therefore, that in general the right or obligation of support should not be taken into account in estimating the compensation for laying a sewer in private lands, as such a right is not now conferred by enjoyment for any length of time, and may under the Act here referred to form the subject of future compensation.

Compensation.

As to the assessment of compensation, see *Colac* (*Ratepayers of*) v. *Summerfield*, [1893] A. C. 187, and cases cited in notes to s. 308, *post*. And see also Acquisition of Land (Assessment of Compensation) Act, 1919, in Vol. II. It would appear that the owner of the soil of a highway under which a sewer is laid is entitled to compensation for damage done to the subsoil (*Northam Bridge and Roads* (*Proprietors of*) v. *South Stoneham R. D. C.* (1907), 71 J. P. 345 ; 23 T. L. R. 476 ; *cf. Ramsden* v. *Manchester, etc. Rail. Co.* (1848), 1 Ex. 723). A notice to lay a sewer was given under this section and the owner claimed compensation. Both parties appointed arbitrators to determine the amount of "damage caused by the construction and execution of the sewer," but after they had met the authority withdrew their notice, the works not having been commenced, and offered to pay the owner's taxed costs up to the time of such withdrawal. The arbitrators awarded £10 as compensation for the damage sustained and also costs. It was held that they had no jurisdiction to award either damages or costs under the submission in question (*Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279 ; 15 T. L. R. 275). *Semble*, however, that compensation might have been allowed for expenses properly incurred between the date of the notice and its withdrawal if this question had been submitted (*ibid.*).

(*f*) The P. H. A., 1848, s. 45, did not contain these words. But notwithstanding the generality of the expression, it was held that a local board could not make sewers out of their district (*Haywood* v. *Lowndes* (1859), 28 L. J. Ch. 400). This decision led to the passing of 24 & 25 Vict. c. 61, which contained the enactment in the next

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paragraph, and the provisions therein referred to, which are set out in ss. 32—34, *post*, pp. 94–96. As to the power of an authority outside the boundary of its district in other respects see *R.* v. *Warner* (1858), 27 L. J. M. C. 144; *Hornsey* (*Mayor of*) v. *Birkbeck Freehold Land Society*, [1906] 1 K. B. 521; 70 J. P. 140; *Shoreditch Borough Council* v. *Wakeham* (1905), 69 J. P. 239; *R.* v. *Cheshire JJ.*; *Ex parte Vyner* (*No.* 2) (1909), 73 J. P. 499; 101 L. T. 683; *Alderson* v. *Bishop Auckland U. D. C.*, [1913] 2 K. B. 324; and *cf. Wordie* v. *Lanarkshire C. C.* (1895), 23 R. 168.

Outfall and distribution works.

(*g*) See ss. 32—34, *post*, pp. 94–96. These sections are, by s. 54, *post*, p. 128, rendered applicable also to the laying of water mains without the district, even where the consent of the adjoining authority has been procured under s. 285, *post*. See *Jones* v. *Conway and Colwyn Bay Joint Water Supply Board*, [1893] 2 Ch. 603; 57 J. P. 501.

Sewage to be purified before being discharged into streams.

17. Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal pond or lake until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake.

General effect of section.

This clause formed a proviso to 24 & 25 Vict. c. 61, s. 4, and, though it appears here as a separate section, is to be regarded as a proviso (see *Harrington* (*Earl of*) v. *Derby Corporation*, on p. 69, *post*, and *cf.* note to s. 1, on p. 1, *ante*). Its effect is that if the sewage or filthy water be duly purified in the manner described, it may be discharged into the stream, canal, lake, or pond (*Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291). The only prohibition contained in the section as regards natural streams is against conveying into any natural stream such sewage or filthy water as will prejudicially affect the purity of the stream. Therefore where sewage or other filthy water is conveyed into an already polluted stream no offence is committed against the section unless the stream is thereby made fouler than it was before (*Att.-Gen.* v. *Birmingham, etc. Drainage Board*, p. 62, *post*). In *Dell* v. *Chesham U. D. C.*, [1921] 3 K. B. 427; 85 J. P. 186, it was held that "filthy water" is distinguishable from "sewage" and includes any matter, whether "foul" or "noxious" which would "affect or deteriorate the purity and quality of the water."

In that case surface water from a road which had long drained into watercress beds and through them into the river by reason of tar treatment of the road surface was rendered impure. It was held that such road water was "noxious matter" within the section, and that although the defendants had power so to treat the road surface (under s. 11, sub-s. 2, of the Local Government Act, 1888), that did not justify the damage to the plaintiff without showing that it was a necessary consequence of the exercise of the power.

"Stream or watercourse."

As to what is a "stream or watercourse," see note to s. 69, *post*, p. 148, and *Pearce* v. *Croydon U. D. C.* (1910), 74 J. P. 429. In that case the defendants caused certain surface drainage to flow across the plaintiff's land, and pleaded (a) that there was a "watercourse" across such land, or (b) that there was a "sewer" across it, and that they were entitled to turn the water into such watercourse or sewer. The land was subject to floods by periodical "bourne flows" from the chalk, and the course taken by such flows was the alleged watercourse or sewer. It was held on the facts that such course was neither a watercourse nor a sewer, and that the plaintiff was entitled to damages for trespass and an injunction. As to what constitutes a "natural stream or watercourse" flowing in a defined channel but eventually burrowing into and being absorbed by the land, see *Maxwell-Willshire* v. *Bromley R. D. C.*, 82 J. P. 12. As to a stream or watercourse becoming a "sewer," see p. 26, *ante*. The section does not justify a discharge into an agricultural ditch which is not a natural stream or watercourse and which, though a "sewer," is one "made for profit" (*Phillimore* v. *Watford R. D. C.*, [1913] 2 Ch. 434; 77 J. P. 453).

Whether drains once connected to

Generally speaking, an authority cannot disconnect a drain once properly connected with their sewer in order to avoid difficulties arising from the discharge of such sewer (*Ainley* v. *Kirkheaton L. B.* (1891), 60 L. J. Ch. 734; 55 J. P. 230). In that

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sewer may be disconnected by an authority.

case the plaintiffs, owners of a large mill in the defendants' district, built water-closets for the accommodation of their workmen, and connected the same by a drain with the defendants' sewer. The sewer was formerly an open watercourse, and drained into a natural watercourse. Proceedings were taken against the defendants for fouling this watercourse, and an application for a *mandamus* to compel them to make a proper system of drainage was adjourned upon their undertaking to close the communication between the plaintiffs' drain and their sewer, or to take proceedings against the plaintiffs under the Rivers Pollution Prevention Acts. The defendants thereupon gave to the plaintiffs formal notice of their intention to cut off the drain, and the plaintiffs brought an action to restrain them from so doing. The plaintiffs had not given any notice to the defendants of their intention to connect their drain with the sewer; but the connection had been in existence for eight years, and the judge found that it was not proved to have been made in contravention of s. 21, *post*. It was held that s. 21 conferred on the plaintiffs the right to drain into the existing sewer, and that it lay on the defendants to see that the sewer was so arranged that it did not contravene s. 17. STIRLING, J., held that the duty is thrown upon the authority to make all necessary sewers, and that it is for them to see that the sewers so made do not convey any sewage water into any natural stream or watercourse until the sewage is freed from all excrementitious or foul or noxious matter—that is to say, that they are not prohibited from making a sewer, the natural effect of which would be to convey such sewage into a stream or watercourse, but before they use it they must take care that the sewage is free from the foul and noxious matter. He held also that the section affects not the individual owner, but the local authority, and that the right conferred by s. 21 on an owner of premises to connect his drains with a sewer was an absolute right. This decision has since been frequently followed; see cases in note (*d*) to s. 21, p. 79, *post*. It may well be, however, that an authority could by injunction compel the disconnection of a drain proved to have been improperly connected, *e.g.*, without complying with the formalities required by s. 21, or to a sewer not intended for the conveyance of sewage; see cases cited in notes to s. 21 on p. 79, *post*, and *Gibbings* v. *Hungerford*, [1904] 1 I. R. 211. In that case the corporation of C. had for many years by permission discharged surface-water from a public road into a pond on the plaintiff's land through a drain belonging to the corporation. Subsequently, as the drain became offensive, the water was, at the plaintiff's request, diverted into a cesspool made by the corporation on his land. By direction of the corporation the defendant H. connected some new houses with the drain. No permission was given by the plaintiff for this to be done. It was held that the plaintiff was entitled to an injunction against the corporation and H. restraining them from discharging the house sewage on his land, and to a mandatory injunction to disconnect the houses from the drain, but that the corporation should pay the costs both of the plaintiff and H. There was a difference of opinion as to whether the act of an authority in directing or permitting sewage to be delivered into a sewer from which it cannot be discharged without creating a nuisance, is *ab initio* unlawful, rendering every person contributing to the nuisance liable to be restrained. FITZGIBBON, L.J., thought that individuals who had connected their drains might be restrained; HOLMES, L.J., thought otherwise. Lord ASHBOURNE, L.C., thought the injunction was rightly granted against both. The facts of the case were peculiar, and it cannot be regarded as a precedent for the granting of injunctions against persons who lawfully connect their drains with sewers. See also hereon *Wallace* v. *M'Cartan*, [1917] 1 I. R. 377.

Liability of authority for polluting a stream.

This is a convenient place for a more detailed statement of the liabilities of local authorities in exercising their powers of making sewers. The following are the principal cases as to the rights of persons against authorities for polluting streams by sewage. (They are for the most part arranged in chronological order.)

In *Oldacre* v. *Hunt* (1855), 6 De G. M. & G. 376, a local board proposed to carry a sewer through certain fields into the river Avon. The owners of those fields, which adjoined the river, had watering places therein; they had also a several fishery in the river, though not otherwise interested in the bed of it, and they had not given their consent to the works. The Master of the Rolls granted an injunction to restrain the board from proceeding with the sewer, and this injunction was confirmed by the Lords Justices, assisted by CRESSWELL and WILLIAMS, JJ. In their opinion,

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the plaintiffs were interested in the river by reason of their watering places, independently of their right to the fishery, which also appeared to the judges to be fairly included under the term *land*. In *Att.-Gen.* v. *Luton L. B.* (1856), 20 J. P. 163, it appeared that the local board carried the whole drainage of the town into the river Lea, which flowed through the land of the relator, who had a mill on its banks. It was not a public navigable river, and a few houses had drained into it previous to 1848; but the works of the board greatly increased the sewage, and polluted the water to such an extent that sheep could not be washed in it. It was held that the board could not justify their proceedings, and that as the relator was interested in the river, and had not given his consent, he was entitled to an interlocutory injunction to restrain them from extending their works. WOOD, V.-C., pointed out that if the owners of the houses erected before 1848 had any right to drain into the river so as to interfere with the plaintiff's rights as a riparian owner such right could only be acquired by prescription, but the board being quite a modern corporation, established since 1848, could have no such rights. The prescriptive right here referred to is merely a right as against individuals. It will be seen hereafter that there can be no prescriptive right to pollute a stream so as to cause a public nuisance. In *M. S. & L. Rail. Co.* v. *Worksop L. B.* (1857), 26 L. J. Ch. 345, the plaintiffs, owners of a canal, had a right to supply water to their canal out of such brooks, streams and watercourses as were within 1,000 yards of it, and the exclusive right to the water in the canal. It was held that this power did not so far extend to rain and other surface water, which, being collected on a road, ran along an open gutter into the canal, as to preclude the local board from allowing it to fall through gratings into a sewer which they had made under the road. But it was also held that the board must be restrained from permitting sewage communications to be made between houses and the sewer so long as the sewer discharged into the canal. See also *Southampton and Itchin Bridge Co.* v. *Southampton L. B.* (1858), 8 E. & B. 801, an action for polluting a canal by improper and negligent construction and management of a sewer. In *Rigby* v. *Mayor, etc. of Bristol* (1860), 29 L. J. Ex. 359, BRAMWELL, B., said: "Suppose a person had, for twenty or thirty years, been in the habit of turning his sewer into a river or other natural stream, it is clear that no action would lie against him for so doing; and why should not a corporation have the power of acquiring a similar right?" There was not, however, in that case any suggestion that the pollution complained of amounted to a public nuisance, nor had the case any reference to the section above set out.

In *Att.-Gen.* v. *Birmingham Corporation* (1858), 4 Kay & J. 528, it was held that works executed in pursuance of a statutory duty must be so executed as not to interfere with the private rights of individuals, and that in deciding on the right of a single proprietor to an injunction to restrain such interference, the circumstances that a vast population will suffer (by remaining undrained) unless his rights are invaded, is one which the court cannot consider. The defendants were bound by a local Act, incorporating the Towns Improvement Clauses Act, 1847, effectually to drain the town. It was held that they were not justified in so carryng on their operations as to drive away fish and prevent cattle from drinking the water of a river at a point seven miles below the town, where it belonged to the plaintiff. It was held also, that assuming the inhabitants to have had before their Act a right to drain their houses into the river, this circumstance would not justify the defendants in discharging their sewage in such a manner as to subject the plaintiff to the inconvenience of which he now complained. And it was further held, that although the plaintiff had submitted to the injury for nearly four years, trusting to the assurance of the council that they were carrying out a scheme of sewerage by which eventually the evil would be removed, he was not precluded on the ground of laches from now applying for an injunction, the rule in such cases being that the mere prospect of injury does not give a right to this relief. In *Bidder* v. *Croydon L. B.* (1862), 6 L. T. 778, the defendants had caused the sewage of the town to be conveyed into the river Wandle. It had not been completely deodorised before entering the river, and had so polluted the water as to kill the fish, and otherwise cause a nuisance. It was held that a riparian owner was entitled to an injunction to restrain further pollution of the water. *Sutcliffe* v. *Booth* (1863), 32 L. J. Q. B. 136; 27 J. P. 613, was an action by one riparian proprietor against another, and is only mentioned here in its order as deciding that a watercourse, though artificial, may have been

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made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream. (This case was considered and approved in *Roberts* v. *Richards* (1881), 50 L. J. Ch. 297; 51 L. J. Ch. 944, and was followed in *Baily & Co.* v. *Clark, Son & Morland*, [1902] 1 Ch. 649.) The case of *Att.-Gen.* v. *Metropolitan Board of Works* (1863), 9 L. T. 139, had reference to the Acts incorporating that body; it was held that these Acts did not empower them to create a nuisance by polluting a stream. In *Cator* v. *Lewisham Board of Works* (1864), 5 B. & S. 115, the plaintiff was the owner of land through which the Poole river flowed, such land being beyond the defendants' district. The defendants executed drainage works within their district by means of which sewage was conveyed into a tributary of the Poole river. The sewage had for many years been carried into the stream, but only so as to pollute the water in an inappreciable degree; but the result of the defendants' works was to do substantial injury to the plaintiff. It was held by the Exchequer Chamber that the plaintiff was entitled to sue, and was not precluded by the clauses of the Metropolis Management Acts, which give persons who sustain damage the right to compensation, for the defendants were not justified in causing a nuisance. See also *Price's Patent Candle Co.* v. *London C. C.*, [1908] 2 Ch. 526; 72 J. P. 429 (affirmed, 75 J. P. 329—H. L.), where it was held that nothing in the Metropolis Management Acts authorised the defendants to commit a nuisance by discharging storm water mixed with sewage into a tidal creek. In *Att.-Gen.* v. *Mayor, etc. of Kingston-on-Thames* (1865), 34 L. J. Ch. 481; 29 J. P. 515, the defendants adopted a new scheme of drainage, whereby a largely increased amount of sewage would be poured into the Thames. The court refused to grant an injunction on the ground that there was no evidence of the actual existence or immediate probability of a nuisance, and in general an injunction is granted only when there is actual damage or imminent danger of damage. In *Goldsmid* v. *Tunbridge Wells Commissioners* (1866), L. R. 1 Ch. 349; 30 J. P. 419, the sewage of a town had for many years been drained by commissioners acting under a local Act into a stream passing through the plaintiff's land which was beyond their district, without perceptibly polluting it. But for some years before the filing of the bill, in consequence of the increase of the town, the stream became perceptibly polluted, and continued to increase in impurity. The court granted an injunction. They held on the facts that no prescriptive right had been gained, but that assuming that such right could be acquired of draining the sewage into the stream to the injury of the plaintiff, it could only be acquired by the continuance of a perceptible amount of injury for twenty years. They further held that although the fact of prospective nuisance is not in itself a ground for the interference of the court, yet if some degree of present nuisance exists the court will take into account its probable continuance and increase. Upon the subject of prescriptive right, TURNER, L.J., said: "I assume, but without giving any opinion on the point, that such a right might well be acquired, but then I think that it could be acquired only by a continuance of the discharge of sewage prejudicially affecting the estate, at least to some extent, for the period of twenty years." This decision was followed in *Liverpool Corporation* v. *H. Coghill & Son, Ltd.*, [1918] 1 Ch. 307; 82 J. P. 129. In *Fielden* v. *Blackburn Corporation*, W. N. (1866), p. 256, the plaintiff was tenant for life of an estate through which the river Darwen flowed. Three miles above his land the defendants caused the sewage of Blackburn to be discharged into a tributary of the Darwen, causing the stream to be polluted. The court granted an injunction. A canal company was authorised by statute to draw water from a beck for their canal. The water in the beck became polluted by the reception of drainage, and the canal consequently became very offensive. The company were indicted for a nuisance and convicted (see 6 B. & S. 631). WOOD, V.-C., granted an injunction to restrain them from continuing to draw polluted water from the beck (*Att.-Gen.* v. *Proprietors of the Bradford Canal* (1866), L. R. 2 Eq. 71). In *Att.-Gen.* v. *Richmond* (1866), L. R. 2 Eq. 306; 30 J. P. 708, the defendants were a highway board, and were the local authority for executing the Nuisances Removal Acts. The court restrained them from allowing any fresh communications to be made with a sewer constructed by their predecessors in office, which occasioned a nuisance to the inhabitants of the adjoining parish by draining into a stream flowing through such parish, although from the limited nature of their powers no order could be made against the board which would have the effect of compelling them to abate the nuisance altogether by stopping up the

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sewer and ceasing to drain into the stream. *Crossley* v. *Lightowler* (1867), L. R. 2 Ch. 478, was an action between riparian owners, in which several important points were decided. It was held that where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably enlarged to the damage of other people. The fact that a stream is fouled by others is not a defence to a suit to restrain the fouling by one. The mere suspension of the exercise of a prescriptive right is not sufficient to destroy the right without some evidence of an intention to abandon it; but where dye-works had not been used for more than twenty years, and had been allowed to go to ruin, it was held that any right of fouling a stream attached to them was lost. The owner of land on the banks of a river can maintain a suit to restrain the fouling of the water of the river without showing that the fouling is actually injurious to him. C. wishing to prevent the water of a river from being fouled by some dye-works, purchased from the owners of the dye-works a piece of land on the banks of the river without communicating to them his object. It was held that in the absence of any express reservation by the owners of the dye-works of the right of fouling, C. could maintain a suit to restrain it. In *Lilly-white* v. *Trimmer* (1867), 36 L. J. Ch. 525, the plaintiff was the owner of premises on the river Wey, below the town of Alton, the local board of which caused the sewage of the town to pass into the river about a mile and a half above his premises. The plaintiff sought to restrain the board from so doing, alleging that he and his family suffered materially in health and otherwise by the nauseous odours created by the sewage, and that the water of the river, which prior to the construction of the sewage works was a pure stream, had been rendered totally unfit for agricultural and domestic purposes. MALINS, V.-C., held that upon the balance of the evidence there was no case for an injunction. He laid down as a settled rule of law that where a work, though of great public importance, can only be effected by interfering with private rights, the private rights must prevail, and the public work must be carried out as best it can without such interference (following *Att.-Gen.* v. *Birmingham*, p. 62, *ante*); but where a great public object is to be attained, such as the drainage of a town, the court should not unnecessarily put any difficulty in the way of carrying it into effect. He held further that in considering questions of nuisance the court must have regard to the extent of the nuisance and to the balance of convenience, and if the extent of the inconvenience sustained is trifling, and such as may readily be compensated by money, the right of parties creating the nuisance must not be interfered with when the object which they seek to attain is of considerable importance, and that the court should not interfere by injunction to prevent a nuisance in cases where the injury was temporary and trifling, though it ought to do so in cases where it was permanent and serious. In *Att.-Gen.* v. *Colney Hatch Lunatic Asylum* (1868), L. R. 4 Ch. 146; 33 J. P. 196, it was held that when a plaintiff had proved his right to an injunction against a nuisance, it was no part of the duty of the court to inquire in what way the defendant could best remove it. The plaintiff is entitled to an injunction at once, unless the removal of the injury is physically impossible; and it is the duty of the defendant to find his own way out of the difficulty, whatever inconvenience or expense it may put him to. But when the difficulty of removing the nuisance is great, the court will suspend the operation of the injunction for a time, with liberty to the defendant to apply for an extension of time. An information was filed at the relation of a local board, praying for an injunction to restrain the visiting justices of a county lunatic asylum from allowing the sewage from the asylum to pollute a certain stream. The fact of the pollution being attributable in part to the sewage of the asylum being proved, the court granted an injunction, but suspended its operation for three months to enable the defendants to make the necessary arrangements, with liberty to apply for an extension of time. The court expressed an opinion that if a public body, which had powers given to it by statute for the performance of a particular object, exercised its powers so as to injure the property of others, it was responsible for the injury, unless the act done was absolutely necessary for the performance of the object of the statute; and that it was no answer to an information at the relation of a local board to abate a nuisance arising from sewage, that the board had power itself to remedy the evil by making sewers, for it was the duty of the board to prevent a nuisance arising in its district, instead of putting the ratepayers to the expense of additional works. A local Act for the improvement of Leeds incorporated the clauses of the Towns Improvement

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Clauses Act, 1847, as to making and maintaining public sewers and the drainage of houses, except in so far as they were inconsistent with it, or expressly varied or excepted. By the local Act the corporation were authorised to construct main sewers to receive the sewage of the town and to convey it into the Aire. It was held that the power to drain into the river was controlled by s. 107 of the Act of 1847, which forbade the commission of a nuisance; that though the river was polluted before it received the drainage of Leeds, the landowners on the banks were entitled to restrain the further pollution; and that though the sewers had been completed and in operation for sixteen years before proceedings were taken, the court would interfere at the suit of the landowners (*Att.-Gen.* v. *Corporation of Leeds* (1870), L. R. 5 Ch. 583; 34 J. P. 708). In *Att.-Gen.* v. *Gee* (1870), L. R. 10 Eq. 131; 34 J. P. 596, a bill and information filed to restrain a local board from discharging sewage into a river, were dismissed with costs on the ground that the injury proved was trifling, MALINS, V.-C., following his previous judgment in *Lillywhite* v. *Trimmer*, *supra*. In *North Staff. Rail. Co.* v. *Tunstall* (1870), 39 L. J. Ch. 131, the council of a borough acting as a local board constructed a sewage system, which resulted in a gradually increasing nuisance to the plaintiffs and the public generally. It being represented on their behalf that the evil could only be dealt with effectually by a comprehensive scheme, and that no such scheme could prudently be adopted pending a parliamentary inquiry into the whole subject, the court granted an immediate injunction against any extension of the system, and restrained the continuance of the existing nuisance from and after the expiration of one year from the filing of the bill. In *Holt* v. *Corporation of Rochdale* (1870), L. R. 10 Eq. 354; 35 J. P. 6, a local Act provided that the corporation should not cause any new sewer to open or drain into the river Roche above a weir. They had enlarged and deepened an old sewer, and an injunction was granted to restrain them from causing or permitting any sewer to be opened into the new sewer, or any other new sewer to open or drain into the river above the weir. From this and other cases already mentioned where authority has been given to discharge sewage into streams, it will be seen that it is necessary to inquire whether the local Act giving such authority does not incorporate the provisions of this or some other Act, from which it must be inferred that the discharge contemplated was to be such as would not cause the pollution of the streams. In the absence of some such provisions, however, the Act may give a positive authority to discharge sewage into a stream, and the effect of such a statutory authority is illustrated in the case of *Lea Conservancy Board* v. *Mayor, etc. of Hertford* (1884), 48 J. P. 628; 1 C. & E. 299. In that case the town of Hertford had long drained into the river Lea, and a company obtained a local Act to make a sewer, intercept and purify the sewage, and then discharge the effluent into the river, all the inhabitants being at the same time prohibited from draining direct into the river. The Act provided that the company should not discharge sewage water into the Lea until after being purified by the best known process. It was held that the statutory provision superseded all common law rights; that the company were entitled to discharge the effluent water purified by the best process; and that no action lay against the company for polluting the river, though that process was still imperfect. For another case in which it was held on different grounds that a corporation had a legal right to send sewage into a tidal river, see *Somersetshire Drainage Commissioners* v. *Bridgwater* (*Mayor, etc. of*) (1898), 81 L. T. 729.

In *Att.-Gen.* v. *Cockermouth L. B.* (1874), L. R. 18 Eq. 172; 38 J. P. 660, an injunction was granted against a local board for polluting a river on the information of the Attorney-General without proof of injury to the public, the pollution of the river being a transgression of powers conferred by statute; but a bill filed by a local board, whose waterworks were supplied from the river eight miles further down, was dismissed with costs in the absence of proof of nuisance. Where there is a breach of an express statutory provision, the Attorney-General may obtain an injunction without proof of damage or injury to the public. See also *Att.-Gen.* v. *Willesden U. D. C.* (1896), 12 T. L. R. 528; *Att.-Gen.* v. *Dorchester Corporation* (1906), 70 J. P. 281; 94 L. T. 682. But he is not entitled on proving his case to an injunction as a matter of right; see *per* VAUGHAN WILLIAMS, L.J., in *Att.-Gen.* v. *L. & N. W. Rail. Co.*, [1900] 1 Q. B. 78; 63 J. P. 772; *per* FARWELL, J., in *Att.-Gen.* v. *Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. 34; 68 J. P. 341; and in *Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 543; *Att.-Gen.* v. *Birmingham*,

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etc. Drainage Board, [1910] 1 Ch. 48; 74 J. P. 57; *ibid., per* Lord ROBSON, [1912] A. C. 788; 76 J. P. 481; *Att.-Gen.* v. *Kerr and Ball* (1915), 79 J. P. 51. See also as to laches in actions by the Attorney-General: *Att.-Gen.* v. *South Staffordshire Waterworks Co.* (1909), 25 T. L. R. 408; *Att.-Gen.* v. *Grand Junction Canal Co.*, [1909] 2 Ch. 505; 73 J. P. 421; *Att.-Gen.* v. *Warren Smith* (1912), 76 J. P. 253.

In *Att.-Gen.* v. *Barnsley Corporation*, W. N. (1874), p. 37, JAMES, L.J., said there could be no prescriptive right to create a public nuisance by fouling a river. (This is the general rule of law with regard to a public nuisance. See *R.* v. *Cross* (1812), 3 Camp. 224; *Hulley* v. *Silverspring's Bleaching, etc. Co.* (1922), 91 L. J. Ch. 207; 86 J. P. 30). For cases where a claim of a prescriptive right to drain sewage into the sea was discussed, see *Foster* v. *Warblington U. D. C.*, and decisions cited therewith on p. 71, *post*. An injunction to restrain the pollution of the river Trent was granted in *Att.-Gen.* v. *Tunstall L. B.*, W. N. (1875), p. 66. In the case of a public nuisance the Attorney-General is justified in taking proceedings at the relation of any person, whether residing near the nuisance or not, and whether interested in the property on which the nuisance exists or not. A public corporate body though not formed for the acquisition of gain and making no profit is liable to pay damages in respect of injury caused by its negligence. The Attorney-General and the owner of a canal filed an information and bill against a municipal corporation to restrain them from permitting sewage to be discharged into the canal, and for an inquiry as to damages. It was held that the Attorney-General was justified in taking proceedings at the relation of the plaintiff, and that the plaintiff was entitled to an injunction and an inquiry as to damages, although he had permitted an obstruction to remain in the canal, whereby the sewage was prevented from being carried away by the flow of the water (*Att.-Gen.* v. *Mayor, etc. of Basingstoke* (1876), 24 W. R. 817). By the R. S. C., Order XXXVI., r. 58, where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the date of assessment. The plaintiff brought an action against a rural sanitary authority for permitting sewage to fall into and pollute a stream running through his land, and obtained judgment for an injunction and damages. The defendants continued to pollute the stream, and three years after the judgment the chief clerk assessed the damages carrying the assessment down to the date of his certificate:—*Held*, that there was a continuing cause of action within the meaning of the rule, and that the damages had been rightly assessed (*Hole* v. *Chard Union*, [1894] 1 Ch. 293)

As to when damages may be granted in lieu of an injunction, see *Pennington* v. *Brinsop Hall Coal Co.* (1877), 5 Ch. D. 769; 41 J. P. 758. As to the measure of damages, see *Tatton* v. *Staffordshire Potteries Waterworks Co.* (1879), 44 J. P. 106. As to when a *quia timet* action will lie to restrain an apprehended injury before actual damage has been done, see *Fletcher* v. *Bealey* (1885), 28 Ch. D. 688; *Att.-Gen.* v. *Mayor, etc. of Manchester*, [1893] 2 Ch. 87; 57 J. P. 343; *Att.-Gen.* v. *Nottingham Corporation*, [1904] 1 Ch. 673; 68 J. P. 125. As to the right of a reversioner to restrain pollution of a stream, see *Jones* v. *Llanrwst U. D. C.*, p. 70, *post*.

In *Blackburne* v. *Somers* (1879), 5 L. R. Ir. 1, it was held that there can be no prescriptive right to pollute a stream by the discharge of sewage in such a manner and to such an extent as to be injurious to public health; that even assuming that a prescriptive right to foul a stream with sewage can be acquired, such right must be restricted to the limits of it when the period of prescription commenced; that if the pollution be substantially increased, whether gradually or suddenly, the court will interfere by injunction to restrain the illegal excess, and that if it be impossible to separate the excess from the legal user, the wrongdoer must bear the consequences of any restriction necessary to prevent the excess, even if it unavoidably extends to a total prohibition of the user. This decision was followed in *Traill* v. *McAllister* (1890), 25 L. R. Ir. 524. *Cf.*, as to private right of drainage, *Watson* v. *Troughton* (1882), 47 J. P. 518; 48 L. T. 508.

A riparian owner is entitled to the use of the water of the stream in its pure and original condition; and if the water becomes fouled by the combined acts of proprietors higher up, he is entitled to proceed against each of them separately, and a defendant cannot escape on the plea that the damage done by him individually is inappreciable (*Blair* v. *Deakin* (1887), 52 J. P. 327; 57 L. T. 522). And see *Nixon* v. *Tynemouth Union R. S. A.* (1888), 52 J. P. 504. But in every case there must be

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some appreciable nuisance caused, either by the defendant alone, or by him with others (*Ridge* v. *Midland Rail. Co.* (1888), 53 J. P. 55).

From 1832 to 1877, the refuse of a fellmongery, and the washings of dyes used in a coloured rag manufactory, had been discharged into a watercourse. In 1878, the fellmongery was abandoned, and the manufacture of leather boards substituted at the same factory. The pollution caused by the discharge from the leather board manufactory was less than that caused by the fellmongery. The owners of the leather board factory were convicted under a local Act of polluting the stream: —*Held*, that the conviction must be confirmed, for even if the factory owners had a prescriptive right to foul the stream, it was as fellmongers, and not as leather board manufacturers; and that there was no authority for holding that the variation of the user, although it cast no increased, but even a less, burden on the servient tenement, enabled the factory owners to substitute a business of a totally different kind to that originally carried on by them, and at the same time to maintain their original prescriptive right to pollute the watercourse, even if such right did exist (*Clarke* v. *Somersetshire Drainage Commissioners* (1888), 57 L. J. M. C. 96; 52 J. P. 308 n.).

An important distinction has been drawn between cases where a nuisance has been created or increased by acts of the local authority and where it exists independently of their acts, though they may have neglected to provide a proper system of sewage. In *Glossop* v. *Heston and Isleworth L. B.* (1879), 12 Ch. D. 102; 44 J. P. 36, the defendants were a local board constituted in November, 1875, under the P. H. A., 1875. The plaintiff complained that for some time before and since the defendants became the sanitary authority, sewage was allowed to fall into a stream passing near his residence so as to pollute it and cause a nuisance to him. It was held that, assuming an actionable nuisance to exist, the defendants were not liable in an action for an injunction and damages, as they had themselves done no act to create or increase the nuisance. And it was laid down that a local board acting under the P. H. A., 1875, causing a nuisance by any act which independently of the statute would have given a cause of action to any person, may be made liable in damages, or be restrained by injunction, unless they can show a justification under the powers of the statute. But if they do not act themselves so as to cause a nuisance, but neglect to perform their duty of providing a satisfactory system of drainage, it is no ground of action by an individual for damages or an injunction. (As to the remedy for a neglect of duty, see notes to s. 15, *ante*, p. 53.) This decision was followed in *Att.-Gen.* v. *Guardians of Dorking Union* (1882), 20 Ch. D. 595. In that case an old sewer discharged into a stream, and a number of persons had acquired prescriptive rights to send their sewage into it. In addition there were others who from time to time sent their sewage into the sewer, so that the total amount of sewage gradually increased. The local board had done nothing in respect of this sewer; but had endeavoured, though without success, to find means for disposing of the sewage of their district. It was held that as the local board had not themselves constructed the sewer, but had only permitted it to be used as formerly by the inhabitants, they were not doing any act which could be restrained under the Public Health Act or the Rivers Pollution Prevention Act, 1876. (But see now the Rivers Pollution Prevention Act, 1893, *post*, and *West Riding C. C.* v. *Holmfirth U. S. A.*, [1894] 2 Q. B. 842; 59 J. P. 213, where it was held that the grounds upon which the foregoing cases were decided did not apply to the proceedings under the Rivers Pollution Prevention Acts.) Had it appeared in the *Dorking Case* that the defendants were neglecting their duty in providing a sufficient sanitary scheme for their district, an aggrieved landowner would have had his remedy under s. 299. See also *Att.-Gen.* v. *Acton L. B.* (1882), 22 Ch. D. 221. In *Ogilvie* v. *Blything Union R. S. A.* (1892), 67 L. T. 18, an action was brought against the authority to restrain the pollution of a ditch running through the main street of a town past the plaintiff's land into the sea. The ditch was covered over as it passed through the town, but was afterwards an open stream, and had been for many years seriously polluted. In 1877, the attention of the defendants was called to the condition of the houses in two new streets, and they required the owners to improve the drains. The owners accordingly ran two drains down the two streets and made communications with the main sewer. These drains were made for the purpose of carrying off surface water, and were not connected with any privies, but in addition to the surface water

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the slops of the houses were allowed to be thrown down the drains. In 1885, in consequence of a complaint, notices were served upon the occupiers to divert all polluting matter from the sewer, and the inspector of nuisances was ordered to inspect all drains entering the main sewer. The notices so served were all effective in causing an abatement of the nuisance except four. Subsequent directions of the defendants as to cleansing the sewer were duly carried out, the effect of which was to diminish the pollution of it to some extent. It was held that the defendants had been diligent, and had done all they could to abate the nuisance; that it was almost inevitable that some prescriptive rights of drainage should have been acquired, with which the defendants had no authority to interfere; that the defendants had no right physically to disconnect the drains; and that the action could not be maintained. But where by agreement with a local board, a person was allowed to insert a pipe from his house in order to carry away rain water into a brook, but afterwards without leave of the board he sent sewage through the pipe, an injunction was granted against the board on the ground that they had power to stop the drain from being used except according to the agreement, and could do so without causing inconvenience to other persons (*Charles* v. *Finchley L. B.* (1883), 23 Ch. D. 767; 47 J. P. 791). A detached portion of the parish of C. had no separate drainage system, but certain houses therein were drained by means of pipes carrying the sewage into cesspools, the overflow pipes from which communicated with main pipes within such detached portion. The drainage of the houses, including such communications, was constructed with the sanction of the C. vestry, as the local authority under the Metropolis Management Act, 1855. The main pipes communicated with watercourses within the adjoining district of the F. local board, and the sewage from the cesspools passing through the main pipes into the watercourses caused a nuisance. The F. board brought an information and action (to which the owners and occupiers of the houses were not parties) against the C. vestry, for an injunction to restrain them from permitting, authorising, or directing, any sewage to pass from the detached portion of C. into the watercourses, so as to cause a nuisance:—*Held* (a), following the opinions expressed in *Att.-Gen.* v. *Guardians of Dorking Union*, *Att.-Gen.* v. *Acton L. B.*, and *Charles* v. *Finchley L. B.*, *supra*, that the C. vestry could not stop up the communications which they had sanctioned:—*Held* (b), that inasmuch as the cesspools and drains were acting properly *qua* cesspools and drains, no proceedings could be successfully taken by the C. vestry against the owners or occupiers of the houses, under s. 85 of the Metropolis Management Act, 1855; and that, as the nuisance and its cause were not both within C., it was doubtful whether proceedings could be taken by the C. vestry against the owners or occupiers of the houses under the Nuisances Removal Act, 1855:—*Held* (c), that, assuming the C. vestry could take proceedings, under the Metropolis Management Act, 1855, or the Nuisances Removal Act, 1855, *Att.-Gen.* v. *Guardians of Dorking Union*, *supra*, was an authority that the vestry could not be compelled by injunction to take such proceedings:—*Held* (d), on the authority of *Glossop* v. *Heston and Isleworth L. B.*, *supra*, that it was not ground for an injunction that the C. vestry were not exercising or performing their other statutory powers and duties:—*Held*, therefore, on the C. vestry undertaking not to sanction further communications between houses within the detached portion of their parish and the main pipes therein until further order, or without the consent of the F. board, that the claim for an injunction failed (*Att.-Gen.* v. *Clerkenwell Vestry*, [1891] 3 Ch. 527). These cases were followed in *Brown* v. *Dunstable* (*Mayor, etc. of*), [1899] 2 Ch. 378; 63 J. P. 519, which was an action by a landowner for an injunction to restrain a corporation from discharging or allowing to be discharged sewage upon his lands from the sewers vested in them, so as to cause a nuisance. The defendants set up a prescriptive right, based on the assumption of a lost grant by the plaintiff's predecessors in title to trustees for the benefit of the inhabitants of the borough, to drain all sewage from any tenements built or to be built within the borough, and to discharge the same on the plaintiff's lands. This claim of right failed. It was proved, however, that there were a number of houses in the borough in respect of which prescriptive rights had been acquired to pass sewage into and along the sewers, and that there were other houses, the connections of which with the sewers had been made with the consent or by the acquiescence of the defendants. It was held that an injunction could not be granted so as to interfere with the prescriptive rights which had been acquired, nor to oblige the defendants to stop up the

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connections of the other houses which they had sanctioned, but that an injunction must be granted to restrain the defendants from authorising or directing any sewage to flow or be discharged on to the plaintiff's lands from sewers vested in them as the sanitary authority. "*Glossop* v. *Heston and Isleworth L. B., supra,* only shows that if the complaint be that the local authority have insufficiently carried out the duties imposed upon them by the statute, no action will lie; but it does not show that where a local authority in the course of their work create a nuisance, no action will lie against them. On the contrary, the judgment in that case is that if a legal wrong has been done, an action will lie, unless the legal wrong has been justified by the statute" (*per* VAUGHAN WILLIAMS, J., in *Dent* v. *Bournemouth* (*Mayor, etc. of*) (1897), 66 L. J. Q. B. 395).

When a local authority have not merely used a sewer acquired from their predecessors, but have made additional sewers or have diverted into an old sewer sewage which formerly took a different course, the court may award damages in respect of pollution caused thereby, for the authority in those circumstances cannot say that they have merely succeeded to a defective system of drainage constructed by their predecessors, and have simply permitted the previous user of the sewer to continue, without themselves doing anything, so as to bring themselves within the decisions in *Att.-Gen.* v. *Guardians of Dorking, supra,* and *Glossop* v. *Heston and Isleworth L. B., supra.* See *Foster* v. *Warblington U. D. C., infra.*

An authority have only a qualified property in the sewers within their district, and cannot prevent persons, who have acquired a prescriptive right to use them from so doing unless they provide other sewers equally effectual. Where a local board had not themselves constructed sewers which were a nuisance, but only permitted them to be used by inhabitants who had acquired a prescriptive right to use them, it was held that the local board did not "cause or suffer" sewage to flow into the Thames within the meaning of s. 64 of the Thames Navigation Act, 1866 (*R.* v. *Staines L. B.* (1889), 53 J. P. 358; 60 L. T. 261). Under similar words in the Thames Conservancy Act, 1894, it was held that a corporation were liable in respect of sewage turned into an old sewer by them from their modern municipal buildings, but not in respect of house drains which they had allowed to be connected with the sewer (*Thames Conservators* v. *Gravesend Corporation,* [1910] 1 K. B. 442; 73 J. P. 381; *cf. High Wycombe Corporation* v. *Thames Conservators* (1898), 78 L. T. 463). So too, where an individual had laid sewers and constructed sewage works for his building estate, it was held that the authority, who had taken no part in the construction or management of such sewers or works, could not be said (although the sewers were legally vested in them) to "cause or suffer" a noxious effluent from the works to flow into a river (*Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192). See, however, *Rochford R. D. C.* v. *Port of London Authority,* [1914] 2 K. B. 916; 78 J. P. 329; where *R.* v. *Staines L. B.* and other cases, *supra,* were questioned. In *Titterton* v. *Kingsbury Collieries, Ltd.* (1911), 75 J. P. 295; 104 L. T. 569, another case of privately managed disposal works, a riparian owner sued the persons in control of the works for the loss of cattle and other injury due to the effluent. It was held that he could do so even though the sewers, and perhaps the works, were vested in the authority. For recent cases in which authorities have been made responsible for loss of or injury to cattle, reference may be made to *Hague* v. *Doncaster R. D. C.* (1908), 73 J. P. 69; 100 L. T. 121; *Lawton* v. *Rawmarsh U. D. C.* (1912), 76 J. P. N. 413; and *Brawn* v. *Brownhills U. D. C.* (1913), Times, February 25th.

The decisions in *Glossop* v. *Heston and Isleworth L. B., supra; Att.-Gen.* v. *Dorking Union, supra; R.* v. *Staines L. B., supra; Brown* v. *Dunstable Corporation, supra,* were followed in *Harrington* (*Earl of*) v. *Derby Corporation,* [1905] 1 Ch. 205; 69 J. P. 62. The sewage of Derby had for many years been discharged into the river Derwent. Such sewage was conveyed (1) by sewers constructed many years ago into which householders had for more than twenty years discharged their sewage; (2) by sewers not laid by the corporation, but which became vested in them when they became the sanitary authority, into which householders had by virtue of their statutory rights made connections; and (3) by sewers laid by the corporation; or was (4) additional sewage arising from the conversion of privies into water-closets under directions given by the corporation. The plaintiff's castle and land was

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situated on the river some distance below the town, and the water of the river was used for feeding his lake. At the outfall from the lake was a water-wheel, from which power was obtained to pump water from an adjacent well to the castle. Owing to the pollution the supply to the lake had to be cut off, and the use of the water-wheel discontinued. The plaintiff claimed, firstly, an injunction to restrain the corporation from polluting the river in such a way as to prevent him from using the water for the purposes of his lake, and so as to be a nuisance to the castle and estate; secondly, a mandatory order to compel them to do certain works of cleansing and removal of foul matter from the plaintiff's lands; and, thirdly, damages for injuries done by the pollution. In 1898, in an action brought by the county council at the instigation of the plaintiff, an order was made in the Derbyshire County Court that the corporation should abstain from polluting the river contrary to the Rivers Pollution Prevention Act, 1876. The corporation, having in 1901 obtained the necessary powers, had since commenced to construct sewage works for the whole of their area. The court held—firstly (a), as to sewage passing through the sewers of the first and second classes, that persons had obtained prescriptive and statutory rights, and that an injunction could not be granted which would interfere with those rights, thus following the *Dorking Case*, and the other cases above mentioned; (b) that to grant an injunction as to the remainder of the sewage was impracticable; and that, moreover, the county council having obtained their order and the corporation being now engaged in carrying out works in order to comply with it, an injunction was unnecessary. Secondly, that a mandatory order to do work on the plaintiff's land could not be granted, and that the proper remedy was in damages. Thirdly (a), that an action for damages would not lie against the corporation for mere acts of non-feasance or neglect, the plaintiff's proper remedy being under s. 299 of the P. H. A., 1875; but (b) that they were liable in damages in respect of acts done by themselves. Fourthly, that the plaintiff could recover in respect of the cost of providing an engine and new water supply to his fields, and injury to his fishing and a house which he let, but not for loss of amenities of his castle, which he did not wish to let, nor for the silting up of the lake, for he ought to have excluded the polluted water earlier. Fifthly, that damages could be recovered for a period of six years, there being a "continuance of damage or injury" within the meaning of s. 1 of the Public Authorities Protection Act, 1893 (*cf. Hague* v. *Doncaster R. D. C.*, *supra*, on this point). The *Derby Case* was followed so far as refusal of an injunction on the ground of prescriptive rights is concerned in *Foster* v. *Warblington U. D. C.*, p. 71, *post*; but it was distinguished by the same judge in *Hobart* v. *Southend-on-Sea Corporation*, p. 71, *post*, on the ground that there, although prescriptive rights of householders might exist, it did not appear that an injunction to restrain the defendants from committing a nuisance would result in any interference with the rights of the householders; that the defendants had not shown that, if proper control was maintained as regards the times at which the sewage was discharged they could not, without any interruption of the householder's rights, so discharge the sewage as not to commit a nuisance. See also *Owen* v. *Faversham Corporation*, *infra*.

In *Jones* v. *Llanrwst U. D. C.*, [1911] 1 Ch. 393; 75 J. P. 68, the plaintiff complained that sewers belonging to the defendants discharged crude sewage into a river opposite to his land. He alleged that the sewage seriously polluted the water and thus infringed his riparian rights; and that fæcal matter was deposited on the river bed and banks in such quantities as to occasion a serious nuisance, and that such deposit was a trespass on his land. The defendants contended that the river being a tidal one, the plaintiff had no riparian rights; that the Earl of A., having the undisputed right to license fishing upon both sides of the river, was the true owner of its bed; that the plaintiff, who was a reversioner, could not sue for anything not injurious to the reversion without joining his tenant as co-plaintiff; that the plaintiff was not complaining of a private wrong, but was endeavouring to make the defendants perform a statutory duty; and that as the sewers were in their existing condition when taken over by the defendants' predecessors from the guardians, and as they had not themselves done anything to create a nuisance, they were not liable. It was held that a riparian owner on the banks of a natural stream is, whether owner or not of the river bed, entitled to the flow of the stream past his land in its natural state of purity; that the part of the river in question being only influenced by exceptional tides was not tidal; that the injury, being of a continuing

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nature, was injurious to the reversion (see also as to reversioners suing, *White* v. *London General Omnibus Co.*, p. 173, *post*; that any one who turns fæcal matter, or allows such matter collected by him or under his control to escape into a river under such conditions that it is carried by the wind or current on to his neighbour's land is guilty of trespass; that the plaintiff's action was a bonâ fide complaint of a private injury, and that inasmuch as by statute and statutory orders the defendant council had succeeded to all "powers duties and liabilities" of the guardians, they were liable to the plaintiff for not disposing of their sewage in the same manner as the guardians would have been; and that, therefore, an injunction must be granted, its operation to be suspended for eighteen months. Reference should be made to this case for the latest discussion of the effect of prescriptive and statutory rights of drainage, and of the true effect of the decision in *Glossop* v. *Heston and Isleworth L. B.*

A bill filed in 1868 prayed an injunction to restrain a local board from causing or permitting any sewage to pass into a brook so as to be a nuisance. An answer was put in which did not in terms suggest any doubt as to the jurisdiction. In June, 1871, a motion was made for an injunction, and the court granted an interlocutory injunction in November, 1872. After various proceedings in February, 1889, a supplemental writ was issued by leave of the court, and a statement of claim was delivered asking for an injunction and also damages, including such as had been occasioned by the failure of the local board to comply with the interlocutory injunction. At the trial of the action, in July, 1890, KAY, J., decided that the defendants had practically abated the nuisance to such an extent that it would not be necessary to continue the injunction; but was of opinion that certain moneys ought to be paid by the defendants to the plaintiffs. Objection was, however, taken that the court had no jurisdiction; that the action and suit were improper; and that the only remedy was by *mandamus*:—*Held*, that if the objection might originally have prevailed, the defendants ought not to be allowed to raise it now; and that the case must be dealt with as if they had deliberately waived any objection on this ground:—*Held*, also, applying the principle that, where there is jurisdiction to grant an injunction, damages may be given in lieu for injury, the injunction would not be continued; but that there must be judgment against the defendants for the moneys found to be due from them at the trial (*Warwick and Birmingham Canal Navigation Co.* v *Burman* (1890), 63 L. T. 670).

In *Smith* v. *Smith* (1875), L. R. 20 Eq. 500, JESSEL, M.R., pointed out that if a nuisance was proved to exist, the court would not hesitate to grant a mandatory injunction. The injunction in such a case was said by NORTH, J., in *Taylor* v. *East Barnet Valley L. B.* (1885), 1 T. L. R. 257, to be a matter of course. For the form of injunction, see *Att.-Gen.* v. *Halifax* (*Mayor, etc. of*) (1869), 39 L. J. Ch. 129; *North Staff. Rail. Co.* v. *Tunstall*, *ante*, p. 65, and *Lingwood* v. *Stowmarket Paper Co.* (1865), L. R. 1 Eq. 77.

An authority who are required by a Provisional Order (duly confirmed) to construct sewage works approved by the L. G. B., cannot rely on such order and approval as a defence to an action for causing a nuisance (*Att.-Gen.* v. *Dorchester Corporation*, p. 65, *ante*).

As to the admissibility of interrogatories in an action for pollution, see *Rose* v. *Chesham U. D. C.* (1913), 134 L. T. Jo. 591.

Discharge of sewage into the sea.

There is no common law right to discharge sewage into the sea, and a person whose oyster beds are injured by pollution can maintain an action (*Hobart* v. *Southend-on-Sea Corporation* (1906), 75 L. J. K. B. 705; 70 J. P. 192; *Foster* v. *Warblington U. D. C.*, [1906] 1 K. B. 648; 70 J. P. 233; *Owen* v. *Faversham Corporation* (1908), 73 J. P. 33; *Price's Patent Candle Co., Ltd.* v. *London C. C.*, p. 63, *ante*). See also. the P. H. A., 1907, s. 12, *post*.

Enforcement of injunction.

With regard to enforcing an injunction reference may be made to *Att.-Gen.* v. *Mayor, etc. of Birmingham* (1871), 24 L. T. 224. There the information was filed nine months before the hearing, but up to the hearing no steps had been taken to abate the nuisance. Under the circumstances the court refused to suspend the injunction for more than six months, with liberty for the defendants to apply for an extension if they could show that they had used due diligence in the meantime. An injunction was suspended for nearly a year in *Att.-Gen.* v. *Willesden U. D. C.* (1896), 12 T. L. R. 528.

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Enforcement of injunction —*cont.*

In *Spokes* v. *Banbury L. B.* (1865), L. R. 1 Eq. 42; 30 J. P. 54, an injunction was granted to restrain the pollution of a stream, and was suspended from March 6th to July 1st. The defendants did not obey, alleging that they had not yet discovered means of deodorising the sewage, and that compliance was practically impossible without stopping the drainage of the town. It was held that there had been gross and wilful contempt, and a sequestration was ordered to issue, which order was affirmed on appeal (13 L. T. 453). A motion for a sequestration against a local board will be granted of course, but not an application to commit the members personally (*Sutton* v. *Barnet L. B.*, W. N. (1877), p. 167; and see *Att.-Gen.* v. *Walthamstow*, W. N. (1878), p. 90). An injunction to restrain the defendants from polluting a stream was granted in January, 1885, with a suspension for three months which the court in April refused to extend; on motion by the plaintiff, under R. S. C., Order XLII., r. 31, for sequestration, it was held that Order XLI., r. 5, requiring service of a copy of the order, etc., did not apply; and that notwithstanding Order XLIII., r. 16, the plaintiff was proceeding regularly in applying for leave to issue sequestration (*Selous* v. *Croydon L. B.* (1885), 53 L. T. 209). It was said in one case that there might be a wilful default within the meaning of Order XLII., r. 31, though there had not been an obstinate refusal to obey the order (*Att.-Gen.* v. *Walthamstow L. B.* (1895), 11 T. L. R. 533). But in a later case it was laid down that where the court is satisfied that the disobedience is not intentional or reckless, but merely casual or accidental and committed under circumstances which negative any suggestion of contumacy, while it may visit the offending party with costs, and may order an inquiry as to damages, it will not take the extreme course of issuing an order either of commitment or of sequestration. To justify so serious a proceeding the court must be satisfied that a contempt of court has been committed—in other words, that its order has been contumaciously disregarded (*Fairclough* v. *Manchester Ship Canal Co.*, W. N. (1897), p. 7). *Cf.* also *Marsden & Sons, Ltd.* v. *Old Silkstone Collieries, Ltd.* (1914), 78 J. P. N. 220; 13 L. G. R. 342, and *Aberdonia Cars, Ltd.* v. *Brown, Hughes and Strachan, Ltd.*, W. N. (1915), p. 254; 59 S. J. 598; and see also *Rantzen* v. *Rothschild* (1865), 30 J. P. 85; 13 L. T. 399, and *Stancomb* v. *Trowbridge U. D. C.*, [1910] 2 Ch. 190; 74 J. P. 210, as to the responsibility of a local authority in such cases for acts done by their servants through carelessness, or in actual dereliction of duty.

An action was brought against an authority to restrain them from polluting a stream, and in July, 1901, a perpetual injunction was granted. In July, 1902, the plaintiff moved for liberty to sue out a writ of sequestration for an alleged contempt in wilfully disobeying the injunction. On the hearing of the motion an engineer was directed to report as to what, if anything, ought to be done to deal efficiently with the sewage. He reported in November, 1902, and the plaintiff thereupon submitted that the report showed that the defendants were in contempt. An order for sequestration was made, but the writ was ordered to lie in the office for six months on the defendants undertaking to carry out the works recommended in the engineer's report, and the defendants were ordered to pay the costs of and incidental to the motion, including the plaintiff's expert's fee and the engineer's fees for his report and supervision (*Lee* v. *Aylesbury U. D. C.* (1902), 19 T. L. R. 106). See also *Lord Gifford* v. *Chichester Corporation* (1902), 24 M. C. C. 252; (1903), 25 M. C. C. 453; *Earp* v. *Brownhills U. D. C.* (1913), Times, March 14th.

For cases where the time has been extended, see *Wood* v. *Harrogate* (*Commissioners of*), W. N. (1874), p. 225; *Taylor* v. *Friern Barnet L. B.*, W. N. (1885), p. 7; *Att.-Gen.* v. *Finchley L. B.* (1887), 3 T. L. R. 356.

Jurisdiction of county court.

An injunction to restrain a nuisance may be granted by a county court in an action within its jurisdiction, and may be enforced by attachment (*Martin* v. *Bannister* (1879), 4 Q. B. D. 491; and see *Richards* v. *Cullerne* (1881), 7 Q. B. D. 623).

Further, county courts have jurisdiction for offences under the Rivers Pollution Prevention Act, see s. 10, *post*, and see also *West Riding of Yorks. Rivers Board* v. *Linthwaite U. D. C.*, [1915] 2 K. B. 436; 79 J. P. 280.

Injunction where nuisance abated before trial.

If between the issue of the writ and the trial, the defendants cease to commit the nuisance, an injunction will not ordinarily be granted, but the court has discretion to grant one (*Chester* (*Dean and Chapter*) v. *Smelting Corporation, Ltd.* (1901), 85 L. T. 67; *Carr & Co.* v. *Bath Gas Light and Coke Co.*, [1900] W. N. 265). See also

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Att.-Gen. v. *Squires & Sons* (1906), 70 J. P. N. 545; *Att.-Gen.* v. *Keymer Brick Co.* (1903), 67 J. P. 434; 1 L. G. R. 654, and *Great Central Rail. Co.* v. *Doncaster R. D. C.* (1918), 82 J. P. 33; 15 L. G. R. 813, and *cf.* p. 208, *post*.

When an injunction has been granted, but works are promptly carried out for the effectual prevention of the nuisance complained of, and are satisfactorily completed before an appeal from the original decision comes on, the appellate court, though agreeing with the decision, will generally accept an undertaking by the defendants and discharge the injunction (*cf. Price's Candle Co., Ltd.* v. *London C. C.* (1911), 75 J. P. 329; 9 L. G. R. 660); but the undertaking should be an unqualified one, and not merely "to use their best endeavours" to prevent, etc. (*Att.-Gen.* v. *Birmingham, etc. Drainage Board*, [1912] A. C. 788; 76 J. P. 481).

Liability for predecessors.

As to the liability of a local board in respect of a decree against their predecessors, see *Att.-Gen.* v. *Mayor, etc. of Birmingham*, p. 62, *ante*; *Taylor* v. *Friern Barnet L. B.*, *supra*, and note (*b*) to s. 12, p. 44, *ante*.

Liability to indictment.

"When statutory powers are conferred under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one, and so contravening the law of the land, the persons exercising them are liable to *indictment*" (*per* COCKBURN, C.J., in *R.* v. *Bradford Navigation Co.* (1865), 6 B. & S., at p. 648). This principle would seem to be applicable to cases, like some of those already mentioned, where power is given by local Acts to drain into a public river and a nuisance afterwards results from the altered circumstances of the district or new or more extensive operations or manufacture carried on therein.

With reference to the pollution of streams by sewage, see also the Rivers Pollution Prevention Acts, 1876 and 1893, and the Alkali, etc. Works Regulation Act, 1906, in App. I., *post*, Vol. II.

Diversion of underground water.

The cases already cited in this note have reference to complaints made against a local authority for polluting streams, and thus interfering with the rights of persons or the public. In other cases questions have arisen as to the right of an authority to intercept the supply of water, questions such as have been the subject of discussion in all times, namely, as to the rights of individuals in running streams, pools, or ponds. A full discussion of the law applicable to these rights cannot be entered upon here. A sanitary authority have sometimes been placed in the position of a private individual disputing as to his right to enjoy or to divert a flowing stream, to intercept it for irrigation or other purposes, as or as against a riparian owner, to pollute or prevent the pollution of the water, or lastly to drain or restrain the drainage of underground or percolating streams. In one important case which was taken from the Court of Exchequer to the Exchequer Chamber, and ultimately to the House of Lords, the right of a local board to drain by means of their wells the underground water from the soil of a neighbouring landowner was established (*Chasemore* v. *Richards* (1857), 7 H. L. Cas. 349). In the elaborate judgments pronounced by CRESSWELL, J., and COLERIDGE, J., who dissented from the rest of the court, will be found an elegant exposition of much of the legal doctrine applicable to this important subject of property. The decision has been followed in *New River Co.* v. *Johnson* (1860), 29 L. J. M. C. 93; 24 J. P. 244; *R. v. Metropolitan Board of Works* (1863), 3 B. & S. 710; *Ewart* v. *Belfast Poor Law Guardians* (1881), 9 L. R. Ir. 172; and *Black* v. *Ballymena* (1886), 17 L. R. Ir. 459. See also *Bradford (Mayor of)* v. *Pickles*, [1895] A. C. 587; 60 J. P. 3; *McNab* v. *Robertson*, [1897] A. C. 129; 61 J. P. 468; *Mostyn* v. *Atherton*, [1899] 2 Ch. 360; *Roberts* v. *Gwyrfai R. D. C.*, [1899] 2 Ch. 608; 64 J. P. 52; *Brain* v. *Marfell* (1880), 44 J. P. 56; 41 L. T. 455; *Dudden* v. *Clutton Union* (1857), 1 H. & N. 627; *Rawstron* v. *Taylor* (1855), 11 Ex. 369; *Bunting* v. *Hicks* (1894), 70 L. T. 455; *Re Willard and Eastbourne Waterworks Co.* (1899), Times, February 1st; *Kibble* v. *Chipping Norton U. D. C.* (1901), Times, February 27th.

An authority may not by an underground drain draw water directly from, and thus diminish the flow of, a surface stream (*Grand Junction Canal Co.* v. *Shugar* (1871), L. R. 6 Ch. 483; 35 J. P. 660). If, however, the flow of a surface stream be diminished by a withdrawal of percolating underground water which indirectly affects the stream, no action will lie. A water board were owners of a well and pumping station situated near a natural stream. The well was lined with steel

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cylinders to a depth of seventy-six feet, and no water from the adjacent soil could get into it above the bottom of the lining. The plaintiff was a riparian owner lower down the stream. The board by pumping water from the well reduced the general level of the water in the surrounding soil, in consequence of which some of the water flowing in the stream leaked out through its bed and sides, and the volume of water in the stream which reached the plaintiff's property was diminished. None of the water which so escaped from the stream ever got into the well. The board was held not liable (*English* v. *Metropolitan Water Board*, [1907] 1 K. B. 588; 71 J. P. 313). Nor may an authority interfere with underground water which flows in a defined channel, the existence and course of which are known (*Bradford Corporation* v. *Ferrand* (No. 2), [1902] 2 Ch. 655; 67 J. P. 21). If an action be brought to restrain alleged interference with underground water, the court will not give leave to a plaintiff who does not know that such water runs in any known channel, to enter on the defendant's land and search for a defined channel, unless there be primâ facie evidence that there is such a channel (*Bradford Corporation* v. *Ferrand* (No. 1) (1902) 67 J. P. 21; 86 L. T. 497).

Where a canal company were empowered by their Act to supply their canal with water from all streams, brooks, and watercourses within one thousand yards of it, it was held that they had no ground of complaint against an authority who, having run a sewer under a road within that distance, made open gratings through which the rain and other surface water fell into the sewer (*M. S. & L. Rail. Co.* v. *Worksop Board of Health*, *ante*, p. 62).

Pollution of underground water.

See also s. 327 (4), and s. 332, *post*, as to the saving for water rights in this Act. No one has a right to use his own land in such a way as to be a nuisance to his neighbour; and therefore if a man puts filth or other poisonous matter on his land, he must take care that it does not escape so as to poison water which his neighbour has a right to use, although his neighbour may have no property in such water at the time when it is fouled. The plaintiff and defendant were adjoining landowners, and had each a deep well on his own land, the plaintiff's land being at a lower level than the defendant's. The defendant turned sewage into his well, and thus polluted the water that percolated underground from his land to the plaintiff's. Consequently the water which came into the plaintiff's well by percolation when he used his pump became adulterated with the sewage. The Court of Appeal held (reversing PEARSON, J.) that the plaintiff had a right of action against the defendant for so polluting his source of supply, although, until the plaintiff had appropriated it, he had no property in the percolating water under his land, and although he appropriated such water by the artificial means of pumping (*Ballard* v. *Tomlinson* (1885), 29 Ch. D. 115; 49 J. P. 692). The decision of PEARSON, J., had previously been dissented from by KAY, J., in *Snow* v. *Whitehead* (1884), 27 Ch. D. 588. But an injunction was refused to restrain a defendant from digging a well on the ground that by so doing he might reduce the supply to the plaintiff's well, and injure it by letting in brackish water (*Tendring Hundred Waterworks Co.* v. *Free, Rodwell & Co.*, Times, July 3rd, 1891).

As to the diversion of water from streams above ground, see notes to s. 51, *post*, p. 119.

As to the liability for damage caused by interference with the natural course of a stream, see *Greenock Corporation* v. *Caledonian Rail. Co.*, [1917] A. C. 556; 81 J. P. 269.

Alteration and discontinuance of sewers.

18. Any local authority may from time to time enlarge lessen alter the course of cover in (*a*) or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition (*b*) of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance (*c*).

A form of notice of intention to alter or discontinue a sewer will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 514.

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(*a*) These words were held to justify the piping of an open watercourse, which the court held to be a "sewer" (*Wheatcroft* v. *Matlock L. B.* (1885), 52 L. T. 356; *cf. Att.-Gen.* v. *Hackney L. B.*, on p. 55, *ante*).

(*b*) These words appear to render it necessary for the authority to provide the new sewer in the first place. See *Att.-Gen.* v. *Guardians of Dorking Union*; *Att.-Gen.* v. *Acton L. B.*, *ante*, p. 67. As to the alteration and substitution of sewers by persons other than the authority, see ss. 331, 333, *post*. As to the duty to adapt or provide private drains when the public sewer is changed, see *Marylebone Vestry* v. *Viret*, and *St. Martin's-in-the-Fields* (*Vestry of*) v. *Ward*, in notes to s. 23, *post*, p. 84. See also *Finlinson* v. *Porter*, p. 85, *post*, as to the right to alter an existing drain in order to suit the depth of the new sewer.

(*c*) In terms this proviso is limited to the discontinuance, closing up, or destruction of a sewer, and does not extend to its alteration; but see the next section. It would enable persons interested to apply to the Chancery Division for an injunction to stop works, while the authority could be indicted for any nuisance caused by their proceedings, if it were a public one. See *R.* v. *Bradford Navigation Co.* (1865), 29 J. P. 613; 6 B. & S. 631, 648.

19. Every local authority shall cause the sewers belonging to them to be constructed covered ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied. Cleansing sewers.

This section deals with the physical construction or condition of a sewer as such; it does not apply to a nuisance caused by a discharge of effluent from a sewer into a river (*Harrington* (*Earl*) v. *Derby Corporation*, [1905] 1 Ch. 205; 69 J. P. 62, as to which, see s. 17, *ante*, p. 69).

Ventilation.

The word "ventilated" was new. It has been suggested that the erection of a ventilating shaft attached to a private house is within the power of a local authority, having regard to the use of this term and the language of the Lords Justices in *Swanston* v. *Twickenham L. B.* (1879), 11 Ch. D. 838; 43 J. P. 380.

Remedy for failure to perform duty.

The duty imposed upon an authority by this section, unlike that created by s. 15, is not one in respect of which complaint may be made to the M. of H. under s. 299, *post*. An action for damages will therefore lie against an authority at the suit of an individual whose property has been injured by their negligent failure to perform such duty (*Baron* v. *Portslade-by-Sea U. D. C.*, [1900] 2 Q. B. 588; 64 J. P. 675). It might have been otherwise had a penalty been imposed by the Act for default in the performance of the duty, as in *Saunders* v. *Holborn District Board*, [1895] 1 Q. B. 64; 59 J. P. 453; or *St. Olave's District Board* v. *Southwark and Vauxhall Water Co.* (1896), 18 M. C. C. 60.

The following cases may be referred to as examples of actions against local authorities for negligent breach of the duty imposed by this section. A sewer was so constructed that there was from time to time an overflow of sewage round a manhole, and on one occasion, not in time of flood, the overflow was so great that a large pool of sewage formed in a neighbouring field, the water in the plaintiff's well was contaminated, great discomfort to him was caused, several members of his family became ill, and ultimately he was obliged to leave his house, though he continued liable to pay rent for it. At the trial before RUSSELL, L.C.J., the plaintiff obtained damages for all these causes of complaint (*Touzeau* v. *Slough U. D. C.* (1896), 60 J. P. 103). Damages were also recovered for negligent construction in *Whitfield* v. *Bishop Auckland U. D. C.*, p. 55, *ante*. An action under Lord Campbell's Act was brought on behalf of the widow and children of a man who had died of blood poisoning from sewer gas. The action was founded upon the negligence of the defendants in allowing a ventilation pipe from their sewer to communicate with the inside of the house. At the trial before COLLINS, J., the jury found for the plaintiffs (*Smith* v. *King's Norton U. D. C.* (1896), 60 J. P. 520). The decision in *Dent* v. *Bournemouth* (*Mayor, etc. of*), *ante*, p. 54, may have been based on the ground that the alleged cause of action amounted to a default to perform the duty imposed by this section. An action was brought against the defendants for negligently and improperly altering certain sewers near to the plaintiff's premises, thereby

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causing him serious illness. It was alleged that the sewer was not properly ventilated and that the plaintiff's illness arose from this defect. At the trial before DAY, J., the plaintiff recovered damages (*Brown* v. *Whickham U. D. C.*, Times, July 14th, 1898). See also *Russell* v. *Royston U. D. C.* (1913), 77 J. P. N. 317. For a case where damages were recovered in respect of injury by sewer gas to men employed in cleansing, see *Digby* v. *East Ham U. D. C.* (1896), 13 T. L. R. 11, and on the new trial, Times, May 25th, 1897; and as to claims by workmen under the Workmen's Compensation Act, see *Broderick* v. *London C. C.*, [1908] 2 K. B. 807; *Eke* v. *Hart-Dyke*, [1910] 2 K. B. 677; *Finlay* v. *Tullamore Guardians*, [1914] 2 I. R. 233; 48 Ir. L. T. 110. See also upon this subject generally, the cases cited in notes to s. 15, *ante*, p. 53.

A local authority are, of course, liable for the negligence of their contractors in laying a sewer. See *Hardaker* v. *Idle U. D. C.*, [1896] 1 Q. B. 335; 60 J. P. 196, and the cases cited in the note to s. 265.

Negligence essential to cause of action.

A plaintiff alleging a breach of the duty imposed by this section must prove negligence. An authority are merely required to use reasonable skill and care to keep the sewers clean, and are only liable to actions at the suit of persons damaged when they have failed to do so (*Hammond* v. *Vestry of St. Pancras* (1874), L. R. 9 C. P. 316; 37 J. P. 456). This decision was followed by NORTH, J., in *Bateman* v. *Poplar District Board of Works* (No. 2) (1887), 37 Ch. D. 272. There it was held that the duty imposed by the Metropolis Management Act, 1855, s. 72 (which corresponds to the above section), to keep the sewers so as not to be a nuisance, is not an absolute duty, but only a duty to use all reasonable care and diligence. If, therefore, a drain has by reason of another drain being connected with it, become "a sewer," and, therefore, by the Act vested in the authority, they will not be liable for a nuisance caused thereby, if it is shown that the connection was made illegally without their knowledge, and that before action brought they did not know, and could not by the exercise of reasonable care have discovered, that the drain was a sewer. And see *Hart* v. *St. Marylebone Borough Council* (1912), 76 J. P. 257; *Craib* v. *Woolwich Borough Council* (1920), 36 T. L. R. 630, and *Ogilvie* v. *Blything Union (Guardians of)* (1891) 65 L. T. 338; (1892), 67 L. T. 18, the facts of which are set out in the notes to s. 17, *ante*, p. 67. In *Stretton's Derby Brewery Co.* v. *Mayor, etc. of Derby*, [1894] 1 Ch. 431, the defendants had made a sewer in 1855. The system of drainage then adopted reasonably provided for the district, and for the then probable increase of buildings which would drain into it, and there had been no negligence in constructing or maintaining the sewer or in not providing a new sewer or sewage system. The plaintiffs many years after the making of the sewer erected a brewery abutting on the road and connected the drainage of the brewery cellars with the sewers. In 1891, 1892, and 1893, the cellars were damaged by floodings from the sewer arising from the fact that by reason of the increase in the number of buildings draining into the sewer, when very heavy falls of rain occurred, the sewer was too small to carry off the influx of water, and the pressure forced the sewage through the connections into the plaintiff's cellars. It was held that the defendants were not liable either as strangers and apart from any statutory duty or (there being no evidence of negligence) under the present section of this Act. See further as to this case, the notes to s. 15, *ante*. The omission to place a flap or penstock at the mouth of a drain leading from a plaintiff's premises to a sewer, was held to be negligence in *Ruck* v. *Williams* (1858), 3 H. & N. 308. In *Brown* v. *Sargent* (1858), 1 F. & F. 112, ERLE, J., ruled that an authority were not bound to provide sewers capable of withstanding the pressure caused by extraordinary storms: *cf. Meek* v. *Whitechapel Board of Works* (1860), 2 F. & F. 144. See also *Dixon* v. *Metropolitan Board of Works* (1881), 7 Q. B. D. 418; 46 J. P. 4, and *Whitehouse* v. *Birmingham Canal Co.* (1857), 27 L. J. Ex. 25, as to opening floodgates to get rid of extraordinary storm water.

Owing to an escape of sewage from a sewer vested in an urban council, the supply of drinking water used by an adjacent hotel became polluted, and an outbreak of typhoid fever occurred. In an action by the proprietor against the council for damages for the pollution of the water supply, the jury found that the pollution was due to negligence on the part of the defendants, and that there was no contributory negligence, and awarded damages. The plaintiff had no proprietary title to the water coming to his hotel through the supply which was so polluted, nor any leave or licence to use the water. It was held that he was entitled to judgment

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on the findings (*Fergusson* v. *Malvern U. D. C.* (1908), 72 J. P. 101). The Court of Appeal inferred from the facts and the findings that the plaintiff was taking water which belonged to the defendants without any right to do so; that the water was collected and polluted on the defendants' land; that the defendants did not know that he was taking such water; and that there was no evidence of any damage to him except that which was brought about by his own act in thus taking the water. They held that, under these circumstances, the plaintiff had not established any breach of duty on the part of the defendants towards him, and entered judgment for the defendants. See 72 J. P. 273. The House of Lords affirmed this decision (73 J. P. 361).

In *Lambert* v. *Lowestoft Corporation*, [1901] 1 K. B. 590; 65 J. P. 326, it was held that an action will not lie against an authority whose duty it is under this Act to maintain sewers, for damage occasioned by the subsidence of a highway due to the defective condition of a sewer and of the soil under the highway, unless there is negligence on the part of the authority. See also *Boome* v. *Bromley R. D. C.* (1905), 27 M. C. C. 481, where BIGHAM, J., directed a jury that in order to render the council liable it must be shown that in the discharge of their statutory duty they had acted negligently.

In *Morris* v. *Mynyddislwyn U. D. C.*, [1917] 2 K. B. 309; 81 J. P. 261, ATKIN, J., remarked: "The duty of a local authority under s. 19 is to maintain the sewer as a sewer, *i.e.*, to take care that it conveys the sewage away and does not become a nuisance owing to leakage."

In that case the local authority were sued for damages for negligence by the plaintiff who had sustained personal injuries by falling over a sewer which had been constructed through private gardens and partly above ground by a landlord in consequence of a notice under ss. 23 and 36. The defendants' inspector of nuisances directed the construction, but as in this he was acting outside his authority, it was held that the defendants were not liable for damage occasioned by negligent construction. Further, as the defendants might have constructed the sewer partly above ground there was no breach of statutory duty in leaving the sewer so constructed as the sewer was not a nuisance within the meaning of the section.

See as to evidence of negligence *Fleming* v. *Manchester Corporation* (1881), 45 J. P. 423; 44 L. T. 517, overruled in C. A., Times, June 27th, 1882; *Hart* v. *St. Marylebone Borough Council* (1912), 76 J. P. 257.

Liability of gas and water undertakers.

In *Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. 781, the company were held not liable for the bursting of a pipe caused by a frost of extraordinary severity. And see *Price* v. *South Metropolitan Gas Co.* (1895), 65 L. J. Q. B. 126, as to a gas pipe fractured by operations of a third party. In *Snook* v. *Grand Junction Waterworks Co., Ltd.* (1886), 2 T. L. R. 308, it was held that a company incorporated by statute for the purpose of supplying water were, in the event of water escaping through a fracture in their main, protected from the doctrine established by *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330; and that before damages can be obtained, it must be proved that the company were guilty of negligence which caused the accident. The Court of Appeal have since decided to the same effect in *Green* v. *Chelsea Waterworks Co.* (1894), 70 L. T. 547. And see also *Att.-Gen.* v *Cory Bros. & Co., Ltd.*, [1921] 1 A. C. 521.

See generally as to the obligation to clean out cuts and channels imposed by provisions such as those contained in this Act, *Geddis* v. *Bann Reservoir* (*Proprietors of*) (1878), 3 App. Cas. 430; *Bligh* v. *Rathangan River Drainage District Board*, [1898] 2 I. R. 205.

With reference to the foregoing cases, it must however be remembered that a special Act may expressly preserve the undertakers' liability in respect of a nuisance: see *Midwood* v. *Manchester Corporation*, [1905] 2 K. B. 597; 69 J. P. 348 (escape of electricity); and *Charing Cross, etc. Co.* v. *London Hydraulic Power Co.* (1914), 30 T. L. R. 441 (escape of water under high pressure), where undertakers were held liable as for a nuisance (apart from any question of negligence).

In *Goodbody* v. *Poplar Borough Council* (1915), 84 L. J. K. B. 1230; 79 J. P. 218, gas not within the control of the defendants escaped into an electric chamber and caused an explosion, whereby the plaintiff was injured. It was held that the defendants not being responsible for the presence of the gas in the chamber were not liable for

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negligence. In this case the two last-mentioned cases were distinguished. In the first the electricity and in the second the water was the property of the undertakers, whereas the gas which escaped was not the property of, or under the control of the borough council. For this same reason the principle laid down in *Rylands* v. *Fletcher*, *supra*, had no application.

Liability of individuals.

As to the liability of the occupier of premises for an escape of water into adjoining premises, see *Snow* v. *Whitehead* (1884), 27 Ch. D. 588; *Sutton* v. *Chard*, W. N. (1886), p. 120; *Gill* v. *Edouin* (1894), 71 L. T. 762; *Prinsep* v. *Belgravia Estate, Limited* (1895), 98 L. T. Newsp. 590; *Gill* v. *Edouin* (1895), 72 L. T. 579; *Blake* v. *Woolf*, [1898] 2 Q. B. 426; 62 J. P. 659.

As to the liability of an owner or occupier for the escape of sewage from a defective drain, see *Humphries* v. *Cousins* (1877), 2 C. P. D. 239; 41 J. P. 280; *Holland* v. *Lazarus* (1897), 66 L. J. Q. B. 285; 61 J. P. 262.

As to the liability of a local authority for accidents caused by plates or coverings placed on the highway for the protection of or as parts of sewers laid under the highway, see cases cited in the notes to ss. 66 and 144, *post*, pp. 144, 261.

Map of system of sewerage.

20. An urban authority (*a*) may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

(*a*) This power is confined to an urban authority, though it is obtainable by a rural authority by means of an order under s. 276.

The Public Health (Support of Sewers) Act, 1883, s. 3, *post*, requires all authorities to make a map of all their sanitary works. Under 27 & 28 Vict. c. 39, s. 10, maps or plans of parishes may be made for the purposes of assessment committees.

Power of owners and occupiers within district to drain into sewers of local authority.

21. The owner (*a*) or occupier of any premises within (*b*) the district of a local authority shall be entitled to cause his drains (*c*) to empty into the sewers of that authority on condition (*d*) of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations (*d*) of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds (*e*), and the local authority may close any communication between a drain and sewer made in contravention of this section and may recover in a summary manner (*e*) from the person so offending any expenses incurred by them under this section.

A form of notice for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 514. See also Suggested Regulations, at p. 515.

(*a*) See the definition in s. 4, *ante*, p. 8.

(*b*) As to the powers of owners and occupiers without the district, see next section. Apparently when a house outside the district drains into a cesspool within the district, the sewage in such cesspool is not "foreign" sewage, and the overflow pipe may be connected to the sewers of the district under this section. See *per* COZENS-HARDY, M.R., and FARWELL, L.J., in *East Barnet Valley U. D. C.* v. *Stallard*, p. 82, *post*.

(*c*) See the definition in s. 4, *ante*, p. 24. This section is confined to *drains*. The P. H. A., 1848, s. 47, included *sewers*. The application of this section will be limited

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if s. 38 of the P. H. A., 1907, has been applied by an Order of the M. of H. By that section "before any drain existing at the commencement of this section and then not communicating with any sewer or the local authority shall be made to communicate with any sewer of the local authority, the local authority may require the same to be laid open for examination by the surveyor, and no such communication shall be made until the surveyor shall certify that such drain may be properly made to communicate with such sewer."

Where there is an existing connection with a sewer the owner is not entitled to break up the surface of a footway vested in the local authority for the purpose of constructing therein an inspection chamber in the drain, but, *semble*, an inspection chamber might be so put in when a connection is first made (*Att.-Gen.* v. *Ashby* (1907), 71 J. P. 387; 97 L. T. 479). An appeal was dismissed by consent upon terms not stated in court: see 72 J. P. 449.

Compliance with regulations.

(*d*) Hence the notice must be given and the owner must ascertain what are the regulations applicable before he commences to make his communication. The word used is *regulations*, not byelaws; therefore, the regulations are at the entire discretion of the local authority, but they must relate to the "mode of making" communications, and must not absolutely prohibit communications (*Brown* v. *Dunstable Corporation*, p. 68, *ante*). The regulations contemplated appear to be general regulations, applicable to all cases in the district. See s. 188, *post*. If s. 38 of the Act of 1907 (see note (*c*), *supra*) has been applied to the district, an old drain, as defined in the section, may be required to be laid open for examination, and the section requires as a condition precedent a certificate by the surveyor that it may be properly made to communicate. A person's right under this section to connect his drain with a sewer does not justify him in trespassing on intervening land not owned by him and laying his drain therein; nor can the authority justify doing so in order to bring his drain up to their sewer (*Wood* v. *Ealing Tenants, Ltd.*, [1907] 2 K. B. 390; 71 J. P. 456; see also note (*g*) to s. 23, *post*, p. 85). But some local Acts empower an authority to lay *drains* in private streets; and apart from such a clause, an authority may be able to assist an owner by laying a new "sewer" across the intervening land under s. 16. In *Russell* v. *Knight* (1894), Times, May 9th, the plaintiff, as owner of the soil of a road, brought an action against the owner of adjoining land for trespass in having unlawfully constructed in the soil of the road a drain communicating with a sewer in the road, and having unlawfully caused sewage matter to be passed through the soil of the road and through the drain and sewer. There was also a complaint that the sewage created a nuisance at the outfall of the sewer on the plaintiff's property. The sewer was a brick watercourse which was formed by a common predecessor in title for the purpose of carrying away water that had accumulated in gravel pits. One defence raised was that the sewer was vested in the local authority and not in the plaintiff; but it did not appear that the defendant or his predecessor in title at any time gave notice to the authority of an intention to drain into the sewer. BRUCE, J., held that the sewer was not a sewer made for profit within the meaning of s. 13, *ante*, p. 45, and was, therefore, vested in the authority, but that the trespass of using the plaintiff's land for the purpose of making a communication with the sewer could not be justified by any of the provisions of the Act, even on the assumption that the sewer was vested in the authority; that the defendant's predecessor in title, not having complied with the provisions of s. 21, would have had no right to empty sewage matter into it; and that, if without leave of the authority the defendant had caused filth to flow so as to create a nuisance on the plaintiff's land, he could not justify by showing that the sewer was vested in the authority. On the last point this case may be compared with *Kinson Pottery Co.* v. *Poole* (*Mayor, etc. of*), p. 30, *ante*, and *Graham* v. *Wroughton*, [1901] 2 Ch. 451; 65 J. P. 710, which show that a person, who by causing his drains to empty fæcal matter into an authority's sewer creates a nuisance at the spot where such sewer discharges, cannot (when proceeded against summarily or civilly) justify himself under this section unless he can show that he has fulfilled the conditions prescribed by it. See also *Fordom* v. *Parsons* and *Wincanton R. D. C.* v. *Parsons* on p. 51, *ante*, as to the liabilities of an occupier and an authority respectively.

Right to connect: extent of.

In *Waltham Holy Cross U. D. C.* v. *Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192, a landowner had constructed a system of sewers and sewage works

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for houses on his estate, and the authority had never taken any part in the management or exercised any control; it was held that the authority could not be convicted of "causing or suffering" the effluent to flow into a river (*cf. Thames Conservators* v. *Gravesend Corporation*, on p. 69, *ante*); but it was apparently assumed that other persons would have a right to connect drains with the sewers (if they could do so without trespassing), since the sewers vested in the authority. See also as to the responsibility for a similar private sewerage system, *Titterton* v. *Kingsbury Collieries, Ltd.*, on p. 69, *ante*. As to these cases, however, see *Rochford U. D. C.* v. *Port of London Authority*, *ibid.*

Where the P. H. A., 1890, s. 18, *post*, is in force, a person entitled to connect a drain with a sewer may require the authority to do the work for him at his expense. The section provides for payment in advance upon an estimate of the cost; and also for agreements as to the enlarging, etc. of drains.

The right of an owner to connect his drain with a sewer has been said to be an absolute right, and not to be affected by the fact that the sewer empties into a watercourse, and that the sending of sewage into it may create an infringement of s. 17, *ante*, p. 60 (*Ainley* v. *Kirkheaton L. B.* (1891), 60 L. J. Ch. 734; 55 J. P. 230; followed in *Brown* v. *Dunstable* (*Mayor, etc. of*), [1899] 2 Ch. 378; 63 J. P. 519). But it was held by a Divisional Court in *Kinson Pottery Co.* v. *Poole* (*Mayor, etc. of*), *supra*, and by BYRNE, J. (and, *semble*, also by COLLINS, L.J.) in *Graham* v. *Wroughton*, *supra*, that this section confers no right to cause drains carrying fæcal matter to empty into a sewer used by an authority for surface and slop water only. See also *Leeds and District Worsted Dyers, etc. Association, Ltd.* v. *West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480, *per* DARLING, J.; *Wincanton R. D. C.* v. *Parsons*, on p. 51, *ante*, *per* RIDLEY, J.; *Molloy* v. *Gray*, on p. 51, *ante*; *Gibbings* v. *Hungerford*, p. 61, *ante*; and *Harwich Corporation* v. *Brewster* (1901), 17 T. L. R. 274; and see also *Wallace* v. *McCartan*, [1917] 1 I. R. 377. To connect new pipes from water-closets to an old drain carrying no fæcal matter into a sewer is in effect to make a fresh connection with the sewer: *per* BYRNE, J., in *Graham* v. *Wroughton*, *supra*; but, when there is an existing connection for sewage, trifling additions to, or alterations in, the internal arrangements have not that effect: *per* EADY, J., in *East Barnet Valley U. D. C.* v. *Stallard*, p. 82, *post*.

Upon somewhat similar provisions in the Metropolis Management Amendment Act, 1862, s. 61, it was held that where a person had with an authority's consent caused a drain to communicate with a sewer, he might afterwards use the drain to the full extent of its capacity. But where an old drain from premises outside a district had formerly drained into an open sewer, which was subsequently converted into a covered sewer, the authority reconnecting the drain with it when it was covered in, it was held that the owner of the drain could not send an increase of sewage from new houses through the drain into the sewer without permission (*Metropolitan Board of Works* v. *L. & N. W. Rail. Co.* (1881), 17 Ch. D. 246). It was held that a district board of works had no power under the same Act, if it approved of the plans and sections of sewers proposed to be constructed by a landowner and branched into the main system, to withhold their sanction in writing to the construction of the same until he should pay them a sum of money to cover their expenses in supervising the work (*R.* v. *Greenwich District Board of Works* (1884), 1 C. & E. 236).

It was held by CHARLES, J., in *Peebles* v. *Oswaldtwistle U. D. C.*, [1897] 1 Q. B., at p. 392, that the right conferred by this section is not limited to drains conveying ordinary sewage only. "It is clear," he said, "from the definition of 'premises' and 'house' (see s. 4, *ante*, pp. 7, 20), that the owner or occupier of a factory is entitled under s. 21 to connect his premises by a drain with the sewer. But having done so, what may be put into the drain? Is he to be limited to passing into it ordinary sewage only? I think not. In my opinion he may use the drain to its utmost capacity, and pass liquids of all kinds into it, including those coming from his manufacturing processes, provided, indeed, that they are not liquids injurious to health. This would have been preventible by injunction under the nuisance clauses of the Act of 1875 (see especially s. 91), and is now expressly forbidden by the P. H. A., 1890, s. 17." Although the judgment of CHARLES, J., was reversed on other points, it was not reversed so far as regards the foregoing quotation. This was followed

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by BYRNE, J., who decided that where the owners of buildings have acquired a right to discharge drainage into a public sewer through a connection lawfully made, such right extends to the discharge of trade and manufacturing effluents, and that the provisions of s. 7 of the Rivers Pollution Prevention Act, 1876, do not justify an authority in cutting off the connection, even though the discharge of the trade effluent prejudicially affects the disposal of the sewage matter conveyed through the sewer (*Eastwood Brothers, Ltd.* v. *Honley U. D. C.*, [1900] 1 Ch. 781; 64 J. P. 792). [See a decision upon a local Act making special provision as to the discharge of trade effluent interfering with treatment or utilisation of sewage, *Garfield* v. *Yorkshire Laundries, Ltd.* (1905), 69 J. P. 411; 3 L. G. R. 1192.] The judgment of BYRNE, J., in *Eastwood* v. *Honley U. D. C.* was affirmed on grounds which did not necessitate a decision as to the right of a manufacturer to send trade effluent into a sewer, because the authority had already allowed the effluent to be introduced into their sewer, and the only questions were whether the sewer had become insufficient and whether the provisoes following the first part of s. 7 of the Rivers Pollution Prevention Act, 1876, applied (*Eastwood Brothers, Ltd.* v. *Honley U. D. C.*, [1901] 1 Ch. 645). In *Brook* v. *Meltham U. D. C.*, [1908] 2 K. B. 780; 72 J. P. 409, the Lords Justices expressed disapproval of the decision of CHARLES, J., *supra*; and see the observations of Lord MACNAGHTEN in *Butterworth* v. *West Riding Rivers Board*, [1909] A. C. 45; 73 J. P. 89. In *Liverpool Corporation* v. *H. Coghill & Son, Ltd.*, [1918] 1 Ch. 307; 82 J. P. 129, it was held that no prescriptive right to discharge into the plaintiff's sewers had been acquired where such discharge had been secret and unknown and unsuspected by the plaintiffs or their predecessors. See also the notes under s. 7 of the Rivers Pollution Prevention Act, 1876, in App. I., *post*, Vol. II. It was in 1903 apparently the view of the law officers that the last-mentioned section is the only one under which a manufacturer can claim to drain his trade effluents into an existing sewer, s. 21, *supra*, having no application, in their opinion, to trade effluents (see Third Report of Royal Commission on Sewage Disposal, at pp. xi. and xii.). Reference must also be made to the P. H. A., 1890, for, in districts where ss. 16, 17 (see *post*) are in operation, it is an offence to send into a sewer any injurious matter, chemical refuse, steam, etc., so as to impede the sewer or cause a nuisance.

If the authority once authorise or permit drains to be made into their sewer they cannot afterwards stop them up (*Clegg* v. *Castleford L. B.*, W. N. (1874), p. 229; *Att.-Gen.* v. *Guardians of Dorking Union*, *ante*, p. 67; *Att.-Gen.* v. *Acton L. B.*, *ante*, p. 67; *Ogilvie* v. *Blything Union*, *ante*, p. 67; *Att.-Gen.* v. *Clerkenwell Vestry*, *ante*, p. 68; *Ainley* v. *Kirkheaton L. B.*, *ante*, p. 60; *Kirkheaton L. B.* v. *Ainley*, [1892] 2 Q. B. 274; 57 J. P. 36; *Brown* v. *Dunstable* (*Mayor, etc. of*), *ante*, p. 68; *Eastwood Brothers, Ltd.* v. *Honley U. D. C.*, *supra*; *Harrington* (*Earl of*) v. *Derby Corporation*, *ante*, p. 69. See, however, *Gibbings* v. *Hungerford* and *Wallace* v. *M'Gartan*, on p. 61, *ante*. In *East Barnet Valley U. D. C.* v. *Stallard*, p. 82, *post*, SWINFEN EADY, J., and apparently COZENS-HARDY, M.R., regarded these decisions as applicable to s. 22 as well as s. 21).

(*e*) Section 251, *post*, provides for the recovery both of the penalty and expenses. As a penalty is in the nature of a punishment for an offence, it is recoverable on information. The procedure, therefore, differs from that for the recovery of expenses which are recoverable upon complaints, and are civil debts within ss. 6 and 35 of the S. J. A., 1879. This distinction did not exist at the time of the passing of the Act; the procedure was then the same in both cases. If, therefore, the penalty is proceeded for, the proceedings must be begun by information; if the expenses, by complaint under the sections just mentioned. The expenses referred to are the expenses of the closing only. It is to be presumed that if the works have occasioned damage to the sewer, the authority can maintain an action in respect of such damage; and, moreover, that they may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be inadequate to repair. Recovery of penalty and expenses.

22. The owner (*a*) or occupier of any premises without the district of a local authority may cause any sewer (*b*) or drain from such premises Use of sewers by owners and occupiers

Section 22. to communicate with any sewer of the local authority on such terms and conditions (*c*) as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, at the option of the owner or occupier (*d*), by a court of summary jurisdiction or by arbitration in manner provided by this Act (*e*).

without district.

Forms of agreement for use under this section will be found in Encyclopædia of Forms and Precedents, Vol. X., at pp. 517, 524.

(*a*) See the definition in s. 4, *ante*, p. 8.

Communication by "sewer."

(*b*) The previous section was confined to a drain, but here the term *sewer* has been introduced, because a more extended easement than that of a drain may be required in respect of premises without the district. The sewer may have to be continued for some distance.

Terms and conditions.

(*c*) A dwelling-house just outside the B. district drained into a cesspool, from which an overflow drain ran into a pond; both cesspool and pond were within the district. The lodge, which was also within the district, was drained by a pipe running into the overflow drain between the cesspool and pond. The pond becoming a nuisance, the owner, at the instance of the B. council, connected the overflow drain with a storm-water drain in the district. Later, the council without consulting the owner connected such storm-water sewer with a soil sewer; and, later still, again without consulting him, connected the overflow drain direct with an extension of the soil sewer. The council now called on the owner to agree terms under s. 22 for a continuance of this connection or to provide other means for disposing of his sewage, and claimed an injunction to restrain him from allowing sewage from the house to enter their sewers till terms were agreed. It was held that, the connection having been already made, the claim failed (*East Barnet Valley U. D. C.* v. *Stallard*, [1909] 2 Ch. 555; 74 J. P. 9). See also s. 28, *post*, p. 91, as to agreements between authorities for the communication of sewers with the sewers of the adjoining districts. The distinction between the two sections lies in the method of communication with the receiving authority's sewer. When this is direct, without the use of a sewer belonging to the outside authority, owners and occupiers may avail themselves of the powers of s. 22. Where, however, the sewage is to pass through a sewer belonging to the outside authority before entering the sewer of the receiving authority, procedure must be under s. 28. It may be suggested that if a communication were wrongfully made so as to cause damage, an action for trespass would probably lie. An injunction would probably be granted even if there were no damage beyond the fact that the communication had been made without compliance with the conditions of the local authority. Under the corresponding section of the Act of 1848, the owner of land adjoining a district agreed by deed with the local board to do certain works and pay £10 a year; and the board agreed to give him leave to drain through their drain all sewage from the property and houses then belonging to him, and from any houses thereafter to be erected on his property. Many more houses were afterwards erected and the board's successors were, under a new Act, prevented from passing their sewage into the Thames as formerly. It was held that the deed was not *ultra vires*, and that the board could bind their successors as to the sewage of houses not then in existence; and further, that though the board were trustees for the ratepayers, they had exercised their discretion, and the agreement did not appear at the time improvident, and its turning out badly for them did not affect it. It was held also, that the law being altered so as to prevent the discharge of sewage into the Thames was no ground for setting aside the deed (*New Windsor (Mayor, etc. of)* v. *Stovell* (1884), 27 Ch. D. 665). See other instances in which contracts of a corporate body tying its hands at a future time were held to be valid (*Att.-Gen.* v. *Mayor of Hastings* (1902), 67 J. P. 165; 1 L. G. R. 41; and *Municipal, etc. Insurance, Ltd.* v. *Pontefract Corporation* (1917), 15 L. G. R. 299; 116 L. T. 671; and *cf. Stourcliffe Estate Co.* v. *Bournemouth Corporation*, in notes to s. 164, *post*, p. 370). It was held that a metropolitan vestry could not enter into a binding agreement to receive sewage into its sewers from a district outside the metropolitan area (*St. Mary, Islington (Vestry of)* v. *Hornsey U. D. C.*, [1900] 1 Ch. 695). (An appeal

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to the House of Lords was adjourned *sine die* for the parties to agree to an arrangement. See note (*b*) to s. 28, at p. 92.) The language used in the above section hardly seems to authorise the council of a district outside the metropolis to receive sewage from houses within the metropolitan area.

It may be noted that there is no provision under which owners or occupiers who have made themselves liable for payments under agreements with neighbouring councils, can be exempted from contributing (in rates) to the cost of sewerage in their own district (unless possibly under s. 211 (4) or s. 224), or can transfer their liability to the council of their district. This has led to hardship in some cases. There are cases in which the outside owner and the local authority are one and the same, as in the case of a local authority acquiring and laying out a housing estate just beyond the boundary of their district. In such a case the necessary communication can be made without any formalities.

(*d*) Compare the provisions of s. 181, *post*. When a dispute arises, if the owner or occupier do not exercise the option at once, the authority may propose one alternative, and if it be not rejected, and the alternative selected, within a reasonable time, it will probably be best for them to proceed in the court, as proceedings there can be more readily supported than would be the case in an arbitration.

(*e*) An owner of land proposed to lay out some of it for building, and gave notice to the authority of an adjoining district of his intention to connect his proposed sewer with their sewer. The authority objected, and stated that if he insisted on arbitration, they would appoint an arbitrator under protest, and raise their objection at every stage of the proceedings. He thereupon commenced an action claiming a declaration of his right to connect. It was held that although there is jurisdiction to make a declaratory judgment under Order XXV., r. 5, this jurisdiction must be exercised with caution, and that as the proposed sewer had not yet been constructed, and no houses yet built, it was undesirable to make a general declaration as to future rights, which might hamper an arbitrator or court of summary jurisdiction (*Faber* v. *Gosforth U. D. C.* (1903), 67 J. P. 197 ; 88 L. T. 549).

Power of local authority to enforce drainage of undrained houses.

23. Where any house (*a*) within the district of a local authority is without a drain sufficient for effectual drainage (*b*), the local authority shall by written notice (*c*) require the owner (*d*) or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house (*e*) ; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct (*f*) ; and the local authority may require any such drain or drains to be of such materials and size (*g*), and to be laid at such level (*h*), and with such fall as on the report of their surveyor may appear to them to be necessary.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required (*i*), and may recover in a summary manner (*k*) the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses (*l*).

Provided (*m*) that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers (*n*) of such houses to cause their drains to empty therein,

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and may apportion as they deem just (*o*) the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner (*k*) the sums apportioned from such owners, or may by order declare the same to be private improvement expenses (*l*).

In connection herewith it should be mentioned that increased powers may be obtained by a local authority if ss. 36, 37 and 49 of the P. H. A., 1907, be applied in their district. See this Act set out, *post*.

(*a*) For definition, see s. 4, *ante*, p. 20. It is immaterial when the house was built.

"Sufficiency" of drainage.

(*b*) The P. H. A., 1848, s. 49, required a report by the surveyor, and made the decision of the local board conclusive. Here no report is required, and the fact of insufficient drainage may be questioned by the owner or occupier. The clause is, however, nearly identical with 29 & 30 Vict. c. 90, s. 10. A report by the surveyor would appear to be desirable, and a form of report is set out in the Encyclopædia of Forms and Precedents, Vol. X., at p. 529.

No power to compel alteration of "sufficient" drains at private cost.

This section is sometimes erroneously regarded as enabling an authority to require an owner to alter his system of drainage, though it may be sufficient in itself, and to justify their requiring an owner to abolish a cesspool, and drain into a sewer. This cannot be done under the section, if the drains are in fact sufficient, even if there is a convenient sewer. Nor, if his drains are sufficient, can they require him to make new drains into a new sewer which they see fit to construct. On these points the decisions under the Metropolis Management Act, 1855, ss. 69, 73, appear to be applicable and conclusive. In *Marylebone (Vestry of)* v. *Viret* (1865), 19 C. B. (N.S.) 424, a vestry required an occupier to make a new drain. It was held that the vestry were in fact seeking to make a complete new scheme of drainage, and that the occupier was not required to make the new drain or bear the charge thereof. The work was necessary, not because the drain in itself required improvement, in which case the circumstances would have been within s. 73 (which corresponds to this section), but because of the alteration of the sewers which brought the case within s. 69 (corresponding to s. 18 of this Act). See also *Att.-Gen.* v. *Clerkenwell Vestry*, [1891] 3 Ch. 527, *ante*, p. 68; *St Martin's-in-the-Fields (Vestry of)* v. *Ward*, [1897] 1 Q. B. 40; 61 J. P. 19, and *Molloy* v. *Gray* (1889), 24 L. R. Ir. 258, *ante*, p. 51.

Notice.

(*c*) See as to the authentication and service of this notice, ss. 266, 267, *post*. For a form of notice, see Encyclopædia of Forms and Precedents, Vol. X., at p. 530. On the corresponding section of the Metropolis Management Act, 1855, s. 473, it was held that a notice by an inspector without the direction of the vestry was insufficient, and that expenses incurred on the owner's default in carrying out the requirements of the notice could not be recovered (*St. Leonard's, Shoreditch (Vestry of)* v. *Holmes* (1885), 50 J. P. 132). The ground of the decision was that the vestry had to exercise a discretion in each case, and it was not enough for an inspector to act as he pleased, and rely upon their subsequent approval. No doubt the same principle applies to the text. See also *Bowyer* v. *Mather*, [1919] 1 K. B. 419; 83 J. P. 53. Compare *London C. C.* v. *Hobbis* (1897), 61 J. P. 85; 75 L. T. 687, and cases in notes to s. 36, *post*, p. 96.

"Owner" or "occupier."

(*d*) See definition in s. 4, *ante*, p. 8. The authority have an option as to whether they will give notice to the owner or occupier, and will doubtless be guided by their view as to how prompt and effectual action can be best obtained. See s. 306, under which the owner may be empowered to enter when the occupier prevents him.

Where the P. H. A., 1890, s. 18 (3), *post*, is in operation, the authority may agree with the owner themselves to make the drain.

Drainage into the sea.

(*e*) There is no reference to the sea as in the former Act, since it is not desirable to contemplate the pollution of the sea-shore; but the latter part of the clause would cover drainage into the sea when practicable without injurious effects. See hereon, cases cited on p. 71, *ante*, and s. 12 of the P. H. A., 1907, *post*.

Distance from site, how measured.

Apparently the measurement must be taken not from the boundary of the curtilage, but from the house or some domestic office occupied with it. An authority served on an owner a notice under this section and a notice under s. 36, *post*, requiring him to provide a sufficient water-closet for the house. The sewer indicated

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in the first notice ran through gardens at the back belonging to the same owner, but let by him on leases which gave him no right to enter and lay a drain. The sewer was 120 feet from the back of the house, 98 feet from a detached building used as a washhouse or kitchen, and 30 feet from the curtilage wall, against which was erected a privy. The owner disregarded the notices; and the authority entered, converted the privy into a water-closet, and laid a drain from it across the gardens to the sewer. It was held that the notice under s. 36 was a good notice; and that, as the washhouse and privy were within 100 feet of the sewer, and as the owner had not shown that his tenants would not allow him to enter the gardens and lay a drain, the authority were entitled to recover the cost of the work (*Meyrick* v. *Pembroke Corporation* (1912), 76 J. P. 365; 10 L. G. R. 710). See also *Blashill* v. *Chambers* (1884), 14 Q. B. D. 479; 49 J. P. 388; and *Wright* v. *Wallasey L. B.* (1887), 18 Q. B. D. 783. In the absence of express provision, or something in the context to the contrary, distance in an Act of Parliament must be measured in a straight line on a horizontal plane, or in common parlance, as the crow flies. See *Mouflet* v. *Cole* (1872), L. R. 8 Ex. 32, as to Acts passed before the Interpretation Act, 1889, and s. 34 of that Act as to later Acts.

(*f*) This does not necessarily mean into an existing covered cesspool. If there be no such cesspool the local authority may require the owner to construct one as in fact he can be required so to do for a new house under s. 25 (*post*, p. 86) (*Chelmsford Corporation* v. *Bradridge*, [1916] 2 K. B. 38; 80 J. P. 318).

Materials and size of drain.

(*g*) It appears from *Austin* v. *Vestry of Lambeth* (1840), 4 Jur. (N.S.) 274, that it is for an authority to decide whether their directions are complied with in regard to the materials to be used. A vestry ordered a drain to be made with pipes of *stoneware of the best kind and quality*, but the builder laid down *Aylesford pipes*, and the vestry declared that these were not stoneware and proceeded to remove them. STUART, V.-C., held that it was for them to determine the question, and refused an interlocutory injunction. His decision was confirmed (27 L. J. Ch. 388, 392); and the bill was afterwards dismissed with costs, the vestry not having acted capriciously or vexatiously (4 Jur. (N.S.) 1032). The authority must also determine the size of the drain. See *Woodward* v. *Cotton* (1834), 3 L. J. Ex. 300.

Difficulties with adjoining owners.

If in any particular case difficulty arises by reason of the owner not having a right to carry his drain through his neighbour's or his own tenant's land, the authority may be able to obviate it by means of the powers conferred upon them. For example, if the house to be drained is within 100 feet of a sewer, but the intervening land belongs to another person, the owner of the house would not by receiving the notice be entitled to make his drain through the intervening land, for the notice does not enable him to commit a trespass. See *Russell* v. *Knight* and *Wood* v. *Ealing Tenants*, cited in the notes to s. 21, *ante*, p. 79; *Meyrick* v. *Pembroke Corporation*, *supra*; *Arlidge* v. *Islington Borough Council*, in note to s. 90, *post*, p. 164; and *Scarborough* (*Mayor of*) v. *Scarborough R. S. A.* (1876), 1 Ex. D. 344, a case of a notice under s. 94 to abate a nuisance on another person's land. But the authority might, if the connection could be effected by laying a new length of *sewer*, lawfully proceed under s. 16, making compensation under s. 308 to the person whose land was interfered with. In *Finlinson* v. *Porter* (1875), L. R. 10 Q. B. 188; 39 J. P. 661, the defendant had conveyed certain land to the plaintiff subject to the joint ownership, and right to the use by the defendant, of a drain running through the land conveyed, together with the right of entering and repairing the drain or replacing pipes in it. The drain discharged into a sewer, which was afterwards removed by the local board, who constructed another at a lower depth. The defendant thereupon lowered the drain and put in fresh pipes in order to adapt it to the new sewer, and it was held that he was entitled to do so, whether his right under the deed was to be regarded as that of a tenant in common of the drain, or as an easement only. But the burden of such an easement must not be increased. See *Watson* v. *Troughton* (1882), 47 J. P. 518.

Level of drain.

(*h*) The drain or sewer might be laid either partly in and partly above ground, or entirely above ground as the local authority might direct (*Morris* v. *Mynyddislwyn U. D. C.*, [1917] 2 K. B. 309; 81 J. P. 261). See p. 77, *ante*.

Right of authority to execute work.

(*i*) "The conditions prescribed by this section as a preliminary to the sanitary body taking the work out of the hands of the owner have regard solely to his rights. They are designed to control the action of the board as against him and not to limit

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their capacity to do the work. It is not permitted to them arbitrarily to interfere and do the work at the owner's expense without first giving him an opportunity of doing it himself. But if they were to do so, he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed" (*per* LUSH, J., in *Hall* v. *Corporation of Batley* (1877), 47 L. J. Q. B. 148; 42 J. P. 151). And see the P. H. A., 1890, s. 18 (3), referred to in note (*d*), *supra*.

Recovery of expenses.

(*k*) See as to the recovery of these expenses, s. 251, *post*, and note (*e*) to s. 21, *ante*, p. 81. The defendant may, of course, dispute the validity of the original notice on such grounds as that his drain was sufficient or the sewer too far off. As to the incidence of the expenses as between a tenant for life and remainderman, vendor and purchaser, landlord and tenant, etc., see *Re Barney, Harrison* v. *Barney*, [1894] 3 Ch. 562, and other cases in the notes to s. 104.

(*l*) See s. 213, *post*.

Construction of new sewer.

(*m*) This provision applies where an authority consider that it will be cheaper for the owners to bear the cost of a new length of sewer and short connecting drains, than to have to make a long drain for each house to the sewer as it exists. Note that the provision differs from that in the Acts relating to the metropolis, as to which see *Bateman* v. *Poplar District Board of Works* (1886), 33 Ch. D. 360, and other cases on pp. 32, 33, as to drainage by "combined operation."

(*n*) See note (*d*), *ante*. A form of notice will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 531.

Finality of apportionment.

(*o*) See s. 257 as to the method of disputing an apportionment of expenses, and s. 268 as to an appeal to the M. of H. against a "notice" of decision.

Power of local authority to require houses to be drained into new sewers.

24. Where (*a*) any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable (*b*), the local authority may, on condition (*c*) of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act (*d*).

A form of notice of intention to proceed under this section is given in Encyclopædia of Forms and Precedents, Vol. X., p. 533.

Object of section.

(*a*) This provision applies to houses built before the authority established their own sewers, as otherwise the proper communication would have been made. It also applies where a sewer is reconstructed or replaced by a new sewer. The authority cannot escape liability under it by requiring the owner to provide new drains under colour of s. 23, *ante*. See *St. Martin's-in-the-Fields* (*Vestry of*) v. *Ward* and other cases, on p. 84, *ante*.

(*b*) See s. 41, *post*, p. 105, for the procedure where a drain is a nuisance or injurious to health.

(*c*) The provision is to be made before the previous drain is closed.

Incidence of cost.

(*d*) And therefore payable according to s. 207 or s. 229 as the case may be; they are not to be charged to the owners or occupiers. The M. of H. permit these drains and their junctions to be included in estimates upon which loans are sanctioned, regarding the drains as branch sewers.

Penalty on building house with-

25. It shall not be lawful in any urban district (*a*) newly to erect any house or to rebuild any house which has been pulled down to or

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Drains in urban district.

below the ground floor (*b*), or to occupy any house so newly erected or rebuilt, unless and until (*bb*) a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor (*c*) may appear to the urban authority to be necessary for the effectual drainage of such house (*d*); and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site (*e*) of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct.

Any person who causes any house to be erected or rebuilt (*f*) or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

In this connection reference should be made to the provisions of ss. 36, 37, and 49 of the P. H. A., 1907, which, if applied in any district, will prevent the use of rain-water pipes as soil pipes and the use of water or stack pipes as ventilating shafts, and will give additional power in connection with the provision of sinks and drains.

Application to rural districts.

(*a*) Note the restriction. If a rural authority find it desirable that this provision should be in operation, they should apply to the M. of H. to grant them the powers of an urban authority with respect to any particular contributory place or places under s. 276, *post*.

(*b*) This constitutes a *new building*. See s. 159, *post*, p. 361.

(*bb*) *Semble*, the words "rebuild . . . or occupy . . . unless and until," must be read distributively, so that the drain need not be made before rebuilding, so long as it is made as part of the operation and before the house is occupied.

Report.

(*c*) This must be the surveyor of the urban authority. See s. 189, *post*, and *Lewis* v. *Weston-super-Mare L. B.*, and *Kendal* v. *Lewisham Borough Council*, *ante*, p. 57.

Authority's discretion.

(*d*) Generally the byelaws require plans and specifications of the building and its drainage to be submitted to the authority. These are referred to the surveyor who is to report to the authority. They must then decide as to the sufficiency of the proposed drainage, and give their directions as to the course to be followed. There does not appear to be any appeal against their directions if their discretion has been exercised within the limits of the power conferred by this section. See *Matthews* v. *Strachan*, *infra*. An authority cannot compel a building owner to make a sewer as distinguished from a drain under this section (*Clarke* v. *Paddington Vestry* (1859), 5 Jur. (N.S.) 138). In deciding what is "necessary for the effectual drainage" of a new house under this section the council must consider only what is necessary for the particular house as regards the size, material, level and fall of the drains. They cannot take into consideration what is desirable having regard to the disposal of the sewage of the district generally, and upon that ground require separate drains for sewage and surface water (*Matthews* v. *Strachan*, [1901] 2 K. B. 540; 65 J. P. 789), but, *semble*, they might acquire powers in this behalf by bye-laws made under s. 157 (*ibid.*, *per* RIDLEY, J., [1901] 2 K. B. at p. 548). A builder submitted a plan for a cottage close to the sea, showing a proposed drain from the sink to a cesspool (there being no water-closet). The plan complied with the bye-laws. The surveyor advised the urban authority that, as the proposed drainage was below the level of ordinary spring tides, the cesspool would at such tides become filled with sea water by percolation, and the system rendered inoperative. The authority consequently disapproved the plan on the ground that it would provide no effectual drainage, and that no satisfactory system of drainage had been submitted. It was held that they had no right to refuse their approval to a plan which complied with the byelaws on general grounds outside the merits of the plan itself (*R.* v. *Bexhill Corporation, Ex parte Cornell* (1911), 75 J. P. 385; 9 L. G. R. 641).

Note to Section 25.

The authority may require a separate drain for each house though only semi-detached, or forming part of a block constituting only one building (*Woodford U. D. C.* v. *Stark* (1902), 66 J. P. 536; 18 T. L. R. 439). In districts where the P. H. A., 1890, s. 18 (3), *post*, is in force, the authority may agree with the owner to make the drain.

See also the P. H. A., 1907, s. 36, which may be applied to the district of any authority. By it, "no pipe used for the carrying off of rain water from any roof shall be used for the purpose of carrying off the soil or drainage from any privy or water-closet. Any person who shall offend against this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings."

Distance from site, etc.

(*e*) See notes (*e*) and (*f*) to s. 23, *ante*, pp. 84, 85.

(*f*) There is no penalty imposed upon the occupier. As to the recovery of the penalty, see s. 251, *post*.

Penalty on unauthorised building over sewers and under streets in urban district.

26. Any person who in any urban district, without the written consent of the urban authority (*a*)—

(1) Causes any building (*b*) to be newly erected over any sewer of the urban authority; or,

(2) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street (*c*),

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority (*d*); and the urban authority may cause any building vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit (*e*), and may recover in a summary manner (*f*) any expenses incurred by them in doing so from the offender.

Form of consent.

(*a*) There is no special mode of giving this consent, as in the former Act. It may be expressed in a letter from the clerk to the council. The consent ought to be entered on the council's minutes, and a copy of the minute forwarded to the applicant. For a form, see Encyclopædia of Forms and Precedents, Vol. X., at p. 537. In some cases it will take the form of an agreement: see forms in Encyclopædia of Forms and Precedents, Vol. X., at pp. 537, 540.

Effect of section upon contracts for sale of land.

(*b*) As to what is a *building*, see note to s. 4, *ante*, p. 22. The conditions of sale relating to a dwelling-house and grounds, not sold for building purposes, provided *inter alia* that any error or omission in the particulars of sale affecting the nature of the property should not annul the sale, but should be matter for compensation, and that the property was sold subject to all rights of way and other easements. A deed of mutual covenants, subject to which the property was sold, precluded any building thereon. The purchaser discovered that there was a public sewer passing under the garden at the rear of, and some distance from, the house, and a manhole used for obtaining access to the sewer. The vendor was ignorant of the existence of the sewer. The sewer was vested in the local authority, and no buildings could be erected over it without their sanction. The purchaser objected to complete on the ground that the vendor was unable to make a title to the property. It was held that the circumstance did not justify the court in releasing the purchaser from his contract; the existence of the sewer did not so alter the character of the piece of land that the purchaser could say he did not get what was intended to be sold, and the case was one for compensation (*In re Brewer and Hankin's Contract* (1899), 80 L. T. 127). This decision was distinguished in a later case where a culverted watercourse was discovered in property sold for building purposes (*In re Puckett and Smith's Contract*, [1902] 2 Ch. 258). In *Pemsel and Wilson* v. *Tucker*, [1907] 2 Ch. 191; 71 J. P. 547, it was held that, owing to the existence of a sewer (vested in the local authority) under part of property, the vendor was unable to convey

all that he had contracted to sell; and that he had not made a good title. In *Shepherd* v. *Croft*, [1911] 1 Ch. 521, where property was sold primarily, but not solely, for residential purposes, it was held that the existence of a culverted water-course was not so material a defect as to justify the purchaser in refusing to complete upon payment of compensation. **Note to Section 26.**

Under the Metropolis Management Act, 1862, s. 68, the wording is wider and includes any "building, wall, bridge, fence, obstruction, annoyance or encroachment in, upon, over or under any sewer." Under this section it was held that a stack of timber was an obstruction or encroachment, but on the facts in the case of so trifling a character as to be immaterial (*Vigers Bros.* v. *London C. C.*, [1919] 1 K. B. 56; 83 J. P. 6).

(*c*) See the definition in s. 4, *ante*, p. 15. This prohibition is introduced here because such vault or cellar might interfere with the course of a sewer hereafter to be made. It refers to the carriageway only, and has no reference to the foot-path. As to the repair of vaults, arches, and cellars under streets in districts where the P. H. A., 1890, has been adopted, see s. 35 of that Act, *post*. Vaults under roadway of street.

(*d*) Forfeitures are recovered by process described in s. 251, *post*. A forfeiture under this section is recoverable as a penalty, for it will be observed that the section speaks of the *offence*. The proceedings are, therefore, in their nature criminal, and the forfeitures must be recovered on information. See note (*e*) to s. 21, *ante*, p. 81. The five pounds is recoverable in any case, the forty shillings only after notice. A form of notice for use under this section will be found in Encyclopædia of Forms and Precedents, Vol. X., p. 536. Recovery of forfeiture.

(*e*) In removing the structure the authority must not interfere with anything not forming part of it, *e.g.*, pipes or wires laid in the subsoil (*Walker U. D. C.* v. *Wigham* (1901), 66 J. P. 152; 85 L. T. 579). Removal of structures.

(*f*) See s. 251, *post*, and note (*e*) to s. 21, *ante*, p. 81. These expenses are recoverable on complaint, and constitute a civil debt under the S. J. A., 1879, for although the section speaks of them as recoverable from the *offender*, they are not in the nature of penalties for the offence, which are provided for by the previous part of the section. Recovery of expenses.

Disposal of Sewage.

27. For the purpose of receiving storing disinfecting distributing or otherwise disposing of sewage any (*a*) local authority may— Powers for disposing of sewage.

(1) Construct (*b*) any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority) without (*c*) their district; and

(2) Contract (*d*) for the use of purchase or take on lease any land buildings engines materials or apparatus either within or without (*c*) their district; and

(3) Contract (*d*) to supply for any period not exceeding twenty-five years (*e*) any person with sewage and as to the execution and costs of works either within or without (*c*) their district for the purposes of such supply:

Provided that no nuisance be created in the exercise of any of the powers given by this section (*f*).

(*a*) This and the following sections apply to both urban and rural authorities. Extent of section.

(*b*) The corresponding section in the P. H. A., 1848, s. 46, was held not to enable a local board to enter land without the owner's consent, and make a tank therein for the reception of sewage from a sewer proposed to be made after a report from their surveyor and notice to the owner. Where such a proceeding was proposed an injunction was granted (*Sutton* v. *Mayor of Norwich* (1858), 27 L. J. Ch. 739). See also *Att.-Gen.* v. *Metropolitan Board of Works* (1863), 9 L. T. 139). While, therefore, an authority have power to make sewers in or through private land (s. 16)

Note to Section 27.

without the consent of the owner (paying compensation), they have no such power to make works for the disposal of sewage under that section. An engine-house with pump and machinery, erected partly above and partly below the level of the ground, for lifting and forcing along a rising main the sewage of a district to a common outfall for treatment is a work for "the purpose of receiving or otherwise disposing of sewage," within the meaning of this section, for which the necessary land must be purchased or leased (*King's College, Cambridge* v. *Uxbridge R. D. C.*, [1901] 2 Ch. 768). For the provisions applicable to the purchase of land, see ss. 175 and 176, *post*.

Sewage works outside the district.

(*c*) The P. H. A., 1848, s. 44, used general language in reference to the making of the sewer. Nevertheless, it was held in *Haywood* v. *Lowndes* (1859), 28 L. J. Ch. 400, that a local board could not make sewers out of their district. Hence 21 & 22 Vict. c. 98, s. 30, and 24 & 25 Vict. c. 61, ss. 4—7, were passed, the latter of which contains provisions which are now set out in ss. 32—34 of this Act, and apply only to a sewer or other work *out* of the district.

(*d*) As to the contracts of urban authorities, see s. 174, *post*. All contracts with them should be under seal if the value or amount exceeds £50; all contracts with rural authorities should be under seal irrespective of their value.

As to the redemption of tithe rent-charge on a purchase under this section, see 41 & 42 Vict. c. 42, s. 1. On being let into possession, the local authority may raise money on the security of the land and works under s. 235, *post*.

Terms of supply.

(*e*) A longer term than was provided in the previous Act (30 & 31 Vict. c. 113, s. 4). Great care is required in framing these contracts. See further, s. 30, *post*, p. 93, as to the terms of the contract.

A local board leased to a company the sewage works of a town and a plot of land for a term of fourteen years, the company covenanting that they would during the term keep the outfall of the works, with the engines, pumps, and apparatus, in proper working order, so as to admit of the free flow of the sewage through the sewers communicating with the works, and so that the same might not at any time be stopped. To a bill by the local board complaining that the company's works were insufficient to treat the sewage successfully, that they were pumping only a portion of the sewage out of the sewers, and were damming back the residue in the sewers so as to be a nuisance to the inhabitants, and that the plaintiffs were being threatened with proceedings, and praying for an injunction to restrain the defendants from permitting the sewage to remain in the sewers so as to be a nuisance or a damage to the plaintiffs, and from damming back the sewage in the sewers, the defendants demurred on the ground that the court could not superintend the proper performance of the works, that the plaintiffs had alleged no special damage, and that it was not the practice of the court to restrain the infringement of a public right at the suit of a corporation, except at the instance or in the presence of the Attorney-General. The court overruled the demurrer and granted the injunction (*Nuneaton L. B.* v. *General Sewage Co.* (1875), L. R. 20 Eq. 127). O. agreed to grant to a local board a lease of land for the purpose of an outfall for drainage, and "to allow the use of the land below the level of the said outfall for drainage purposes." O. was to have the benefit of the sewage matter, paying nothing therefor. The board erected a sewage tank with an outlet, but without any works for distributing the sewage over O.'s land. It was held that the agreement did not give the board a right to indiscriminately pour the sewage on the land, and that they must use proper means for distributing it in a manner to benefit the land, and not to injure it for agricultural purposes (*Witham L. B.* v. *Oliver* (1884), 1 T. L. R. 60).

Prohibition of nuisance.

(*f*) See the Towns Improvement Clauses Act, 1847, s. 24. This prohibition applies to private as well as public nuisances, and authorities have been restrained from carrying on works of sewerage and drainage highly important with reference to their own district and the sanitary state of it, but causing an injury and a nuisance to the property of individuals. As to how far an authority can be held liable for damage caused by a flow of sewage if they succeed to a defective system of drainage constructed by their predecessors, and simply permit the previous use of the sewers to continue, without doing, themselves, anything actively, see *Glossop* v. *Heston and Isleworth L. B.*, *Att.-Gen.* v. *Guardians of Dorking*, *Foster* v. *Warblington U. D. C.*, *Jones* v. *Llanrwst U. D. C.*, in notes to s. 17, pp. 67, 70, 73, *ante*, and *Att.-Gen.* v.

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Lewes Corporation, on p. 55. Where, however, they make new sewers and connect them with a sewer to which they have succeeded from their predecessors they are liable in damages, for it can under such circumstances be no longer said that there is nonfeasance only. See *Foster* v. *Warblington U. D. C.*, *supra*, and *Earl of Harrington* v. *Derby Corporation*, cited in the notes to s. 17, p. 69, *ante*.

A council acquired from P.'s predecessor a site for a sewage farm, and their conveyance gave them "the free right of passage and running of water" from the site through a ditch on land of the vendor, the council using the same so as not to create a nuisance to him or his tenants. In an action by P., and his tenant complaining that the council caused effluent to flow from the farm into the plaintiff's land and ditch and complaining of nuisances by smells, it was held that the fact that the land was sold to be used as a pumping outfall for sewage did not, by operation of an implied grant, preclude the plaintiffs from complaining of the discharge of the effluent, and also that the express grant of the right to discharge water, being limited to the passage and running of water, was not a grant of the right to discharge the effluent (*Phillimore* v. *Watford R. D. C.*, [1913] 2 Ch. 434; 77 J. P. 453).

There is no right to discharge sewage into the sea without liability for the consequences, and a nuisance caused by such a discharge is embraced in the concluding words of the section. See *Hobart* v. *Southend-on-Sea Corporation* (1906), 75 L. J. K. B. 305; 70 J. P. 192; *Foster* v. *Warblington U. D. C.*, p. 71, *ante*; *Owen* v. *Faversham Corporation* (1908), 73 J. P. 33; and *Price's Patent Candle Co., Ltd.* v. *London C. C.*, p. 63, *ante*. See also *Andrews* v. *Ramsgate Corporation*, 38 M. C. C. 69, Times Newsp., Feb. 24th, 1916, as to liability for damages for nuisance by the pollution of sea water caused by depositing waste chalk on the foreshore.

See *Hewinson* v. *Cheltenham R. D. C.*, in notes to s. 299, *post*, for an action in respect of a sewage farm alleged to cause a nuisance, and see also *Bainbridge* v. *Chertsey U. D. C.*, 79 J. P. 134; 13 L. G. R. 935; and *Great Central Rail.* v. *Doncaster R. D. C.*, 82 J. P. 33; 15 L. G. R. 813.

Where a nuisance is only temporary and occasional, the court will only interfere by injunction in extreme cases (*Att.-Gen.* v. *Preston* (*Mayor, etc. of*), (1896), 13 T. L. R. 14).

By a Provisional Order, confirmed by Act of Parliament, an authority were required to carry out within a fixed time works for the disposal of the sewage of their district approved by the L. G. B., and in case of default this requirement was made enforceable in manner provided by s. 299. The authority constructed sewage works approved by the L. G. B., but, though constructed without negligence, they created both a public and private nuisance. It was held that the Order was only a direction to the authority to exercise the powers of s. 27 within a given time, and did not exempt them from their obligation under the section not to create a nuisance, and an injunction was granted (*Att.-Gen.* v. *Dorchester Corporation* (1906), 70 J. P. 281; 94 L. T. 682).

See also notes to s. 17, *ante*, p. 60, as to pollution of streams.

Power to agree for communication of sewers with sewers of adjoining district.

28. The local authority of any district may, by agreement (*a*) with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers to communicate with the sewers of such last-mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the Local Government Board (*b*): Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into the sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

Note to Section 28.

(*a*) This should be under seal. The sanction of the M. of H. is not required by the section to the actual agreement. Before entertaining proposals for communication, however, the Ministry consider it desirable that the two authorities concerned should have entered into an agreement for the communication of their sewers, and if possible settling the terms. Before sanctioning the communication the Ministry usually direct a local inquiry or inspection, and give particular attention to the manner in which the receiving authority disposes of its sewage. A form of agreement will be found in the Encyclopædia of Forms and Precedents, Vol. X., at p. 555.

Form of agreement.

(*b*) See the further power granted by s. 285, in regard to works which will be for the common benefit of two or more districts. The sanction of the M. of H. is not required to the joint action there authorised.

Effect of agreement.

An agreement provided that the N. local board should make a sewer and allow the sewers of the C. district to drain into it; but the C. local board were not to permit the sewage of any other district or places to pass into their sewers so as to discharge into the sewer to be made by the N. board. Under Acts of Parliament then in existence, the owners of premises beyond the limits of a district had power to make a sewer to communicate with the sewers of the district, and by an Act subsequently passed (Act of 1875, s. 22), similar powers were given. It was held that the provisions of the agreement were overruled by the subsequent Act, and that the N. board could not restrain the C. board and the owners of premises beyond their district from making sewers which would discharge into the sewer of the N. district. It was held also that the agreement must be taken to have been made subject to the provisions of the law then existing, under which the owners of premises beyond the C. district had similar powers (*Newington L. B.* v. *Cottingham L. B.* (1879), 12 Ch. D. 725; and see *Mayor, etc. of New Windsor* v. *Stovell*, *ante*, p. 82).

Position apart from agreement.

Where there is no agreement such as that mentioned in the section, it appears from *Att.-Gen.* v. *Acton L. B.*, *ante*, p. 67, that notwithstanding the obligation imposed on a local board by the P. H. A., 1875, to drain their district, their right to send the sewage of their district directly or indirectly into the sewers belonging to the authority of an adjoining district is, in the absence of express enactment, no higher than the right of a landowner to send sewage from his land on to the land or into the drains of a neighbouring landowner. See also *Rathmines and Rathgar Improvement Commissioners* v. *South Dublin Guardians*, *ante*, p. 31. If, therefore, a prescriptive right has been acquired to send some sewage from one district into the sewers of another, the burden cannot be increased without the consent of the authority of the latter district. The *ratio decidendi* of *Metropolitan Board of Works* v. *L. & N. W. Rail. Co.* (1881), 17 Ch. D. 246 (*ante*, p. 80), applies to an authority just as it does to an ordinary landowner. An injunction was granted in the absence of proof of substantial damage, on the ground that the defendants by their pleading claimed a right to continue doing that which the court held they were not entitled to do. The court granted such injunction as to the future, but refused to grant a mandatory injunction to compel the stopping up of existing drains: (1) because to do so would cause serious inconvenience to the district; and (2) because it is doubtful whether an authority have power to stop up drains which they have once authorised to be connected with their sewers. And inasmuch as the injunction applied only to the future, the court refused to suspend its operation.

Connection with metropolitan sewers.

This section does not enable a district council to procure the connection of its sewers with those of an authority in the metropolis (*St. Mary, Islington* (*Vestry of*) v. *Hornsey U. D. C.*, [1900] 1 Ch. 695). On an appeal to the House of Lords the hearing was adjourned *sine die* for the parties to agree to an arrangement which was effected by an award of Lord JAMES OF HEREFORD, dated March 9th, 1905, to which effect is given by the London County Council (General Powers) Act, 1906. See also *London C. C.* v. *Acton U. D. C.* (1902), 18 T. L. R. 689.

Power to deal with land appropriated to sewage purposes.

29. Any local authority may deal with any lands held by them for the purpose of receiving storing disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding twenty-one years for agricultural purposes (*a*), or by contracting with some person to take the whole or a part of the

produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance (*b*). Section 29.

(*a*) Such a lease granted to a member of an authority will not disqualify him under s. 46 of the L. G. A., 1894, *post* (*R.* v. *Gaskarth* (1880), 5 Q. B. D. 321; 44 J. P. 507; followed in Ireland in *Local Government Board* v. *Eivers*, [1902] 2 I. R. 262). The same construction is to be placed on s. 12 of the Municipal Corporations Act, 1882, which relates to contracts with members of borough councils. Member of authority may take a lease.

There is a general provision for leases of the lands of authorities in s. 177.

As to loans on the security of sewage works, see s. 235, *post*.

As to the rating of a sewage farm worked by the local authority or by a tenant thereof, see *Burton-upon-Trent* (*Mayor, etc. of*) v. *Burton-upon-Trent Union* (1889), 24 Q. B. D. 197; 54 J. P. 453; *London C. C.* v. *Erith Churchwardens*, [1893] A. C. 562; 57 J. P. 821; *Leicester* (*Mayor of*) v. *Beaumont Leys Churchwardens* (1894), 63 L. J. M. C. 176; *Stourbridge Main Drainage Board* v. *Seisdon Union* (1902), 66 J. P. 372; 86 L. T. 415; *Davies* v. *Seisdon Union*, [1908] A. C. 315; 72 J. P. 305; *Hall* v. *Seisdon Union* (1913), 77 J. P. 17. Rating of sewage farm.

It is understood that the M. of H. and their technical advisers much prefer that the local authorities should keep sewage lands in their own hands, on the ground that a lessee or tenant is more likely to devote his attention to the production of crops than to the efficient purification of the sewage.

(*b*) This appears to be a repetition of the proviso to s. 27, *ante*, p. 89.

30. Where any local authority agree with any person (*a*) as to the supply of sewage and as to works to be made for the purpose of such supply (*b*), they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become shareholders (*c*) in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested. Contribution to works under agreement for supply or distribution of sewage.

(*a*) See the definition in s. 4, *ante*, p. 6.

(*b*) See s. 27 (3), *ante*, p. 89. This section contemplates the execution of works by the landowner; under s. 27 (3) the execution may be by either party.

(*c*) This provision was contained in 30 & 31 Vict. c. 113, s. 15; but the consequences might be so complicated that it is not likely to be often adopted. It is difficult to consider the consequences of a local authority being involved in a winding-up suit. On this subject Buckley on Companies, 7th ed., pp. 8, 90, may be referred to. And see also *Royal Bank of India's Case* (1869), L. R. 4 Ch. 252, as to the liability of a corporate body in respect of shares in a company.

31. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorised by the Improvement of Land Act, 1864, and the provisions of that Act shall apply accordingly. Application of the Improvement of Land Act, 1864, to works for supply of sewage.

The provisions of this Act (27 & 28 Vict. c. 114) are too numerous to be set out in this work. It enables owners of limited interests in lands to execute certain improvements (in which by this section sewage works are now included), and to charge the lands with the cost. See also 62 & 63 Vict. c. 46.

Section 32. *As to Sewage Works without District.*

Notice to be given before commencing sewage works without district.

32. A local authority shall, three months (*a*) at least before commencing the construction or extension of any sewer or other work for sewage purposes (*b*) without their district (*c*), give notice (*d*) of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the *turnpike roads and* (*e*) streets, and other lands (if any) through across under or on which the work is to be made and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served (*f*) on the owners (*g*) or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the *trustees* (*e*), surveyors of highways (*h*), or other persons having the care of such roads or streets.

(*a*) That is, calendar months. See the Interpretation Act, 1889, s. 3.

"Sewage works": what included.

(*b*) The plaintiffs had a sewage farm on the banks of a river. The defendants had some sewage works higher up the same stream. The effluent from these works was carried away by a drain, which passed through the plaintiffs' sewage farm, and discharged into a "pool," which communicated with the river by means of a sluice, and, becoming narrower, ultimately formed a backwater into the river. Into this backwater the effluent water from the plaintiffs' sewage farm was discharged. The bottom of the pool being uneven, sewage fungus collected and caused a nuisance. The freeholder commenced proceedings in respect of the nuisance, which were compromised, the defendants agreeing to cleanse the pool and cement the bottom of it. The pool was entirely out of the defendants' district, and partly in the plaintiffs' district. The defendants having commenced their operations without giving any notice under this section, the Court of Appeal held that they were wrong, as the works were "sewage works" within its meaning (*Wimbledon L. B.* v. *Croydon R. S. A.* (1886), 32 Ch. D. 421).

(*c*) The power to construct a sewer without the district is given by s. 16, *ante*, p. 55. The powers as to other sewage works are contained in s. 27, *ante*, p. 89.

Powers of authority and practice of the M. of H.

This section applies even where the consent of the authority of the adjoining district has been obtained under s. 285, *post* (*Jones* v. *Conway and Colwyn Bay Joint Water Supply Board*, cited in note (*g*) to s. 16, *ante*, p. 60). If, however, two or more authorities are combining under s. 285 for the construction of works of common benefit, the M. of H. hold that notices need not be given unless works are to be constructed in a district outside the jurisdiction of the combining authorities.

When the works beyond the district are of a trifling character and also when it is very desirable to avoid delay, it is sometimes found possible to avoid the giving of notices by arranging with the adjoining authority to carry out the work.

The consent of the owners of the lands traversed will not obviate notices, and they must apparently be given even when the works are to be on the council's own land. In fact there is no way in which compliance with this inconvenient section can be avoided except under the circumstances above.

It may be convenient to set out here the practice of the M. of H. when proposals come before them for the construction of works of sewerage or sewage disposal beyond the district of a local authority, in connection with an application for sanction to a loan. The Ministry require the clerk to the authority at the end of the period allowed for the service of objections to furnish a statutory declaration, duly stamped with an impressed stamp, showing that the requirements of the section have been complied with. A copy of the newspaper containing the advertisement, and of the form of notice served on the owners, lessees, and occupiers, and on the overseers and road authorities (if any) (see note (*h*) below) must be annexed to the declaration as

exhibits. The Ministry also require to be furnished with a copy of any notice of objection which may have been served on the council under s. 33. If no such objection has been made, this must be stated in the declaration, but if any such objection has been made and not withdrawn, the district council must pass a resolution asking the Ministry to appoint an inspector for the purposes of s. 34 and forward a copy of it to the Ministry. Under no circumstances will they sanction a loan before the time limited by the notices has expired and any objections have been disposed of, and it is only under exceptional circumstances (such as when the works are entirely upon the authority's own land and statutory objections are very improbable) that the Ministry will consent even to investigate a scheme before the authority are in a position to proceed with the works. The procedure required by this section should be taken when land is proposed to be purchased for sewage disposal purposes, the works being described possibly in rather general terms. Otherwise the authority may find land on their hands which they cannot use.

Note to Section 32.

(*d*) One advertisement would satisfy the terms of this clause; but the authority may sometimes deem it advisable to advertise several times. The notice should be signed by the clerk to the authority. See s. 266, *post*. For a form of notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 566.

Advertisement.

(*e*) The words in italics were repealed by the S. L. R. A., 1898.

(*f*) No time is specified when the notice is to be served, but it is to be implied from the next section that it should be three months before it is proposed to commence the works.

Time for serving notice.

(*g*) See the definition in s. 4, *ante*, p. 8. As to the authentication and service of such copy, see ss. 266, 267, *post*; and as to the term *reputed* owners, see note on s. 176, *post*, and note (*b*) to s. 6 of Private Street Works Act, 1892, *post*.

Persons to be served.

A council constructed a sewer under the bed of a goit without giving notice under this section to the defendant, who either owned the goit, or had an easement in it for the supply of water to his mill. He thereupon dug down to, broke and plugged the sewer. It was held that his interest in the goit, being an easement, came within the definition of "lands" in s. 4, *ante*, p 7, even if he was not the actual owner; and that the council had therefore no authority to carry the sewer under the goit without notice to him; but the defendant having cut the sewer and thereby caused great inconvenience and risk of disease to the public, costs were refused. It was further held that he was within his right in counterclaiming for damages, as the council by resisting his title had given him no opportunity of agreeing upon damages (*Cleckheaton U. D. C.* v. *Firth* (1898), 62 J. P. 536).

(*h*) It will be remembered that in both urban and rural districts the council is the surveyor of highways for the purposes of this section. See s. 144, *post*, p. 253, and s. 25 (1) of the L. G. A., 1894. If a sewer is to pass under a main road, the maintenance of which is in the hands of the county council, notice should be served upon that council. See s. 11 (12) of the L. G. A., 1888.

33. If any such owner, lessee, or occupier, or any such overseer, *trustee* (*a*), surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority (*b*) at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as herein-after mentioned (*c*), unless such objection is withdrawn.

In case of objection, works not to be commenced without sanction of L. G. B.

(*a*) The word "*trustee*" was repealed by the S. L. R. A., 1898.

(*b*) The notice should be addressed to the authority, but may, as it seems, be in general terms. For a form of notice, see the Encyclopædia of Forms and Precedents, Vol. X., p. 567. If there be no objection, no reference to the L. G. B., now the M. of H., will be necessary unless a loan is required, as to which see s. 233, *post*.

(*c*) See ss. 32 and 34, and the notes thereto.

Section 34.

Inspector to hold inquiry and report to the L. G. B.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry (*a*) on the spot (*b*) into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

(*a*) See, as to this, s. 293, *post*. These inquiries are usually combined with an inquiry into a loan application. The application should be made by the clerk, and should be accompanied by a copy of the resolution directing it. See note (*c*) to s. 32. For a form of application, see Encyclopædia of Forms and Precedents, Vol. X., p. 568.

(*b*) The procedure will probably consist of an inquiry at the offices of the council, and a visit by the inspector to the *locus in quo*.

PRIVIES, WATER-CLOSETS, ETC.

Penalty on building houses without privy accommodation.

35. It shall not be lawful newly to erect any house (*a*), or to rebuild any house pulled down to or below the ground floor (*b*), without a sufficient (*c*) water-closet earth-closet or privy and an ashpit (*d*) furnished with proper doors and coverings.

Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty (*e*) not exceeding twenty pounds.

This section must be read subject to ss. 39—42 of the P. H. A., 1907, *post*, where those sections are in force.

(*a*) See note on s. 4, *ante*, p. 20.

(*b*) See s. 159, *post*, p. 361.

(*c*) In case of dispute the justices will decide as to what is or is not sufficient upon the evidence. P. built two cottages with one privy, which was found, as a fact, to be sufficient for the use of the occupiers of both cottages. It was held that he had complied with the requirements of this section, on the ground that it does not require a separate water-closet, earth-closet, or privy for every individual house built or rebuilt (*R.* v. *Clutton Union* or *Clutton Union* v. *Pointing* (1879), 4 Q. B. D. 340; 43 J. P. 686). See, however, the next section and the proviso thereto; and generally as to sanitary conveniences used in common, see P. H. A., 1890, s. 21, *post*.

(*d*) The expression "ashpit" includes any ashtub or other receptacle for the deposit of ashes, fæcal matter, or refuse (P. H. A., 1890, s. 11, *post*).

The words "furnished with proper doors and coverings" appear to refer to a water-closet, earth-closet, and privy, as well as to an ashpit (*Clerkenwell Vestry* v. *Feary* (1890), 24 Q. B. D. 703; 54 J. P. 676).

(*e*) See, as to the recovery of this penalty, s. 251, *post*.

Power of local authority to enforce privy accommodation for houses.

36. If a house within the district of a local authority appears to (*a*) such authority by the report of their surveyor or inspector of nuisances (*b*) to be without a sufficient (*c*) water-closet earth-closet or privy and an ashpit furnished with proper doors and coverings, the local authority shall (*d*), by written notice (*e*), require the owner or occupier (*f*) of the house, within a reasonable time therein specified, to provide a sufficient water-closet earth-closet or privy and an ashpit furnished as aforesaid, or either of them as the case may require (*g*).

If such notice is not complied with, the local authority may (*h*), at the expiration of the time specified in the notice, do the work thereby

required to be done, and may recover in a summary manner (*i*) from the owner (*k*) the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses (*l*): Provided that where a water-closet earth-closet or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a water-closet earth-closet or privy may be so used, they need not (*m*) require the same to be provided for each house. Section 36.

This section must now be read subject to ss. 39—42 of the P. H. A., 1907, *post*, where those sections are in force.

(*a*) These words make the authority in the first instance the judge of the sufficiency of the existing accommodation, but the question will be open on an appeal to the M. of H. under s. 268, the justices cannot try the question (*Robinson* v. *Sunderland Corporation* (No. 2), [1899] 1 Q. B. 751; 63 J. P. 341). No appeal lies to the M. of H. until demand for payment has been made; a notice requiring work to be done under s. 36 is not a "decision" of the L. A. within s. 268 (*R.* v. *L. G. B., Ex parte Thorp* (1915), 84 L. J. K. B. 1184; 79 J. P. 248). Discretion and powers of local authority.

(*b*) This officer is introduced here for the first time. It should here be noticed that under s. 191, *post*, a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act. A form of report will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 503. Inspector of nuisances.

(*c*) Though the officer is to report, the authority are to determine as to the sufficiency of the convenience. It was decided that a district board under the Metropolis Management Act, 1855, where there is a clause identical with the above, could not lay down any general rule prescribing the use of privies, and requiring water-closets to be erected in the place of privies, in compliance with such general rule, and not with reference to the particular circumstances of the case. Where, therefore, the board were proceeding in accordance with such rule to erect water-closets in default of the owner, it was held that their proceedings could not be supported (*Tinkler* v. *Wandsworth District Board of Works* (1858), 27 L. J. Ch. 342; 22 J. P. 223); and this decision was followed in *Wood* v. *Widnes Corporation*, [1898] 1 Q. B. 463; 62 J. P. 117. On November 20th a report as to insufficiency of sanitary appliances was presented at a meeting of the "Unhealthy Dwellings Sub-Committee" of a municipal corporation; the sub-committee thereupon resolved to instruct their surveyor to prepare plans of the work required, and to request the property owners to attend the meeting at which such plans would be considered. On November 28th, at a meeting of the sanitary committee, the minutes of the sub-committee were read and adopted without discussion. On December 5th, at a meeting of the council, the proceedings of the sanitary committee were read and approved without discussion. Subsequently, the sub-committee resolved to recommend that notices specifying the necessary improvements be served on the various owners; and this resolution was adopted without discussion by the sanitary committee, and the clerk was ordered to serve the notices. The minutes of the sanitary committee were then adopted without discussion by the council. It was held (distinguishing *Wood* v. *Widnes Corporation, supra*) that there was evidence to justify a finding of fact that the order was made after separate consideration of each case (*Agnew* v. *Manchester Corporation* (1902), 67 J. P. 174; 1 L. G. R. 9; *cf. Robinson* v. *Sunderland Corporation* (No. 1), *infra*). *Wood* v. *Widnes Corporation* was also distinguished in *Carton Colliery Co.* v. *Hemsworth R. D. C.*, 38 T. L. R. 395; 20 L. G. R. 227. As to acts and orders of a sub-committee ultimately approved by a committee and by the council, see also *Bower* v. *Caistor R. D. C.* (1911), 75 J. P. 186; 9 L. G. R. 448. See also *Tottenham U. D. C.* v. *Hillier*, 42 M. C. C. 221. Each case to be considered on its merits.

The L. G. B. expressed the opinion (prior to the passing of the P. H. A., 1907) that in the absence of special local Act provisions an authority had no power to incur expense in attempting to induce owners to undertake a general substitution of water-closets for privies. The Board considered that whatever the authority might do to bring about a change of system must be as part of a regular procedure in particular cases either under s. 36 or the nuisance provisions of the Act (ss. 91 *et seq.*), and that it was only under such circumstances, and upon default of an owner or owners, that expense might be incurred under the Act of 1875. Following this Conversion of privies into water-closets.

Note to Section 36.

Conversion of privies into water-closets—*cont.*

doctrine the M. of H. do not sanction loans for the general purposes of conversion under s. 36; the circumstances are different under s. 39 (4) of the Act of 1907. In order to give an authority greater latitude in the way of procuring a general conversion of privies into water-closets, clauses are sometimes inserted in local Acts or Provisional Orders. These clauses for the most part follow a model series, the meaning and effect of which was considered in *Bootle Corporation* v. *Owens* (1898), 66 J. P. 357; 87 L. T. 74. See also *Agnew* v. *Manchester Corporation, supra*, and *Smith* v. *Greenwood*, [1907] 2 K. B. 385; 71 J. P. 353, where it was held under local Acts that, so long as each case was separately considered, there was power to require water-closets to be substituted for privies.

When an authority have decided that the existing accommodation is in a particular case insufficient, they have power to order what kind of accommodation must be provided, for the section gives them power to order the providing of a "sufficient water-closet earth-closet or privy and an ashpit, . . . or either of them *as the case may require*" (*St. Luke* (*Vestry of*) v. *Lewis* (1862), 26 J. P. 262; 1 B. & S. 865). In *R.* v. *Sherborne L. B.*, Times, March 20th, 1880; *S. C.*, *sub nom. Bogle* v. *Sherborne L. B.* (1880), 46 J. P. 676, the defendant was the owner of several houses, each of which had a water-closet. The water-closets had no flushing apparatus, and were flushed by pouring water from pails. The surveyor of the local board having reported that the water-closets were insufficient, the board gave notice to B. to provide sufficient water-closets, and, on his failing to do so, executed the necessary works, and proceeded to recover the expenses from B. It was held that the justices were right in refusing to hear evidence as to the necessity of the work done; it was for the board to determine, on the report of the surveyor, whether the water-closets were sufficient, subject only to the right of appeal to the L. G. B. against a demand for the repayment of expenses under s. 268; and the duty of the justices in enforcing payment of the expenses incurred was purely ministerial. LUSH, J., said: "I do not say that there may not be water-closets in certain localities, and under certain circumstances, which would be sufficient without a flushing apparatus by way of a cistern or otherwise; but, on the other hand, it is quite obvious that there may be a water-closet which, under other circumstances, though a water-closet, is not sufficient, and it is for the local board to form their opinion. They know the locality, and the condition of the houses and the neighbourhood, and it is for them to form a judgment whether the report represents the water-closets as being inefficient for the purposes of the Act. It is quite clear that the local board took that view, because, immediately upon this, they gave a notice, resting upon the report of their surveyor, that the water-closets were insufficient by reason of their not being provided with cisterns and flushing apparatus. If that be so, I think it is quite enough to justify them in forming their opinion on the matter; therefore, we have no authority to interfere." And see, *per* POLLOCK, B., in *Ex parte Whitchurch* (1881), 6 Q. B. D. 545; 45 J. P. 617. In a subsequent case it was held that an authority had power under this section, upon being satisfied that a house was without a sufficient privy, to require the owner (subject to his right to appeal to the L. G. B. under s. 268) to provide a sufficient water-closet in the place of the existing privy (*Nicholl* v. *Epping U. D. C.*, [1899] 1 Ch. 844; 63 J. P. 341). This decision was followed in *Carton Colliery Co., Ltd.* v. *Hemsworth R. D. C.*, 38 T. L. R. 395; 20 L. G. R. 227. See also *Sutcliffe* v. *Sowerby Bridge U. D. C.*, *infra*, and *Meyrick* v. *Pembroke Corporation* (1912), 76 J. P. 365; 10 L. G. R. 710). A dictum apparently to the contrary in *Smith* v. *Greenwood*, *supra*, at [1907] 2 K. B. 389, 390, must, *semble*, be disregarded.

How far details may be specified.

An authority, having decided that a water-closet is necessary, must not dictate to the owner what kind of water-closet he is to provide (*Wood* v. *Widnes Corporation*, *supra*). An authority served on an owner a notice that, as his house was without a sufficient water-closet, he was "to provide a sufficient water-closet to the said house according to the specification given by this notice"; then followed the usual notice that if the work was not done the authority would enter and do it, and a specification of the kind of water-closet to be put in. In an action for an injunction to restrain the authority from entering, it was held, that the notice was bad on the ground that it did not allow the owner to comply with it by providing any other "sufficient" water-closet than that specified, although it was not given in pursuance of a general resolution without regard to the particular requirements (*Robinson* v. *Sunderland Corporation* (No. 1), (1898), 62 J. P. 216;

Note to Section 36.

78 L. T. 194). In this case it was suggested that the notice might be bad also for leaving out the words "earth-closet or privy," which, according to s. 36, the premises should be without before the notice can be given. In *Sutcliffe* v. *Sowerby Bridge U. D. C.* (1909), 73 J. P. 385; 100 L. T. 967, the appellant's premises were furnished with privies and a midden, but not with water-closets. An intimation had been given calling her attention to the insufficiency of the system, and asking her to provide suitable water-closets and ashbins in place of the existing privies and midden. She declined to put in water-closets, but was willing to put in tub closets. Notice was then served requiring her, as the houses were without sufficient "water-closets, ashpits and ashbins," to provide sufficient water-closets, ashpits and ashbins. It was held that although it said nothing about the insufficiency of the existing "privies," it was a sufficient notice. See also *Meyrick* v. *Pembroke Corporation, supra,* for a decision as to the sufficiency of a notice. In such a case the remedy of the plaintiff is not by appeal to the M. of H. under s. 268 of the P. H. A., 1875; appeals to that body lie upon the question of insufficiency when a demand for payment is made (*Robinson* v. *Sunderland Corporation* (No. 1) (1898), 62 J. P. 216; 78 L. T. 194). And see *R.* v. *L. G. B., ante,* p. 97.

As to the enforcing of the provision of privy accommodation in houses let in lodgings, see s. 90, *post,* p. 161.

For the definition of an ashpit, and the application of the words "furnished with proper doors and coverings," see note (*d*) to the preceding section.

(*d*) This is a duty imposed upon the local authorities, and applies to each class of authority.

(*e*) See ss. 266 and 267, *post,* as to authentication and service. For a form of notice, see *Nicholl* v. *Epping U. D. C.*, [1899] 1 Ch. 844, and also the Encyclopædia of Forms and Precedents, Vol. X., at p. 504.

(*f*) See s. 306, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(*g*) See note (*c*), *supra.*

(*h*) This proceeding is permissive, not obligatory. If the local authority apply to justices under s. 305 for an order entitling them to enter and do the work, the justices cannot consider evidence as to the sufficiency of the existing sanitary arrangements. The only mode of questioning the "sufficiency" is by appeal to the M. of H. under s. 268 when a demand for payment is made (*Robinson* v. *Sunderland Corporation* (No. 2), [1899] 1 Q. B. 751; 63 J. P. 341). There is also a *dictum* to the effect that if in obedience to a notice an owner does certain work not considered sufficient by the authority, the justices cannot go into its sufficiency (*Sutcliffe* v. *Sowerby Bridge U. D. C., supra, per* Lord ALVERSTONE, C.J.); but the case there cited for the proposition (*Robinson* v. *Sunderland Corporation* (No. 2)) does not appear to support the *dictum.* The justices can consider whether the notice is regular in form (*Sutcliffe* v. *Sowerby Bridge U. D. C., supra*). Jurisdiction of justices and Local Government Board.

(*i*) See s. 251, and note (*e*) to s. 21, *ante,* p. 81. Justices, when enforcing payment of these expenses, act ministerially only. They cannot enter into the consideration of whether the accommodation existing before the notice was insufficient or not. If the notice was valid, the justices have no alternative but to order payment. The only method of questioning the propriety of the local authority's decision is by appeal to the M. of H. against a demand for payment (being a notice of decision) under s. 268, *post* (*R.* v. *Sherborne L. B.; St. Luke's* (*Vestry of*) v. *Lewis, supra; R.* v. *L. G. B., Ex parte Thorp* (1914), 79 J. P. 248; 13 L. G. R. 402, and cases in note (*c*), *supra.* And see also *Hargreaves* v. *Taylor* (1863), 27 J. P. 325; 3 B. & S. 613; *St. John, Hackney* (*Vestry of*) v. *Hutton*, [1897] 1 Q. B. 210; 61 J. P. 54). Recovery of expenses.

W. was required by an authority to do certain work under s. 36, and on her default they did the work themselves. Payment of the expenses was demanded by a written notice signed by the authority's rating surveyor, whose duty it was to sign all notices demanding payment of such expenses. On the authority taking proceedings to recover the expenses, it was objected that the notice required authentication, and therefore ought to have been signed by their clerk, surveyor, or inspector of nuisances. It was held that the rating surveyor was a proper person to make the demand; that the notice did not require authentication within the meaning of s. 266, and that therefore the signature referred to in that section was not necessary (*Willis* v. *Rotherham Corporation* (1911), 75 J. P. 421; 105 L. T. 436).

Note to Section 36.

The owner of eight houses was summoned by the respondents for £5 9*s.* 9*d.* expenses incurred by them in putting an earth-closet in each of four of the houses. The respondents had given notice to the owner to provide four of the houses with a sufficient closet, but he did not do the work, and it was done to five of the houses by the respondents; no notice having been given in respect of one of the houses, it was admitted that the respondents had no right to do the work at it. The expense of the work at the five houses amounted to £6 17*s.* 2*d.*, and the respondents deducted one-fifth for the house in respect of which no notice had been given, leaving a sum of £5 9*s.* 9*d.* Their surveyor had certified that he had "settled and apportioned" the sum payable by the owner in respect of the work at the four houses to be £1 7*s.* 5¼*d.* per house, making a total of £5 9*s.* 9*d.*, the sum claimed, and notice to that effect was given to the owner. It was held that the division of the expenses was not a settlement and apportionment within the meaning of s. 257, *post*, since it was not an apportionment between different owners, but merely a division of the expenses between the council and the owner, and that therefore the respondents were not bound, before taking proceedings, to wait until three months after the service of notice of the so-called "settlement and apportionment" (*Bower* v. *Caistor R. D. C.* (1911), 75 J. P. 186; 9 L. G. R. 448).

In *Place* v. *Rawtenstall Corporation* (1916), 80 J. P. 433; 14 L. G. R. 901, the plaintiff was required by a notice under a local Act to convert a pail closet into a water-closet and on his non-compliance therewith the work was done by the defendants. The defendants, however, had served similar notices in respect of other property adjoining, and as they were carrying out the work for the whole they constructed a combined drain, which drain at the point of passing the plaintiff's premises was at a greater depth than would have been necessary if solely for the drainage of his premises. In this way the support to the plaintiff's premises was disturbed, and damage ensued. *Held*, that the defendants were liable in damages in that the work which had been executed by them and which caused the subsidence was more than the plaintiff by the notice was required to do.

(*k*) Though the notice may be given to the owner or occupier, these expenses are to be recovered from the *owner*, who is defined in s. 4, *ante*, p. 8. He may appeal to the M. of H. under s. 268, *post*, after demand for payment has been made (*R.* v. *L. G. B., Ex parte Thorp*, *ante*, p. 97).

(*l*) See s. 213, *post*.

Accommodation common to two houses.

(*m*) It will be observed that the previous part of the section rendered it incumbent upon the authority to require a sufficient water-closet or privy to be made, and, therefore, though this proviso removes this compulsion in this particular case, it does not prevent them from making the requisition when they think proper to do so. The authority are the sole judges of the insufficiency under this section. At the same time it must be remembered that one privy *may* be sufficient for two houses, so as to protect the owners from liability to the penalty under s. 35. The two sections are entirely distinct (*per* COCKBURN, C.J., in *R.* v. *Clutton Union* or *Clutton Union* v. *Pointing*, *ante*, p. 96).

The owner of a house in Ireland let the ground and first floors to two tenants as separate tenements; the only water-closet and sanitary accommodation for both tenants was in the yard, and could only be reached by going through the living rooms on the ground floor. On the owner being charged for that a nuisance existed on the premises occupied by the tenant on the first floor, on account of "the premises so occupied being is such a state to be a nuisance and injurious to health by reason of same having no water-closet or other sanitary accommodation, and that said nuisance was caused by his act or default," the magistrates, having found as a question of fact that "there was sufficient accommodation for both tenants, and that the tenant of the first floor had unrestricted access to the yard through the kitchen on the ground floor, dismissed the case on the merits, being of opinion that the defendant was not bound in law to supply a separate water-closet and sanitary accommodation for the exclusive use of each of the two tenants." It was held that the justices were right (*Belfast Corporation* v. *Thompson* (1908), 42 Ir. L. T. 215).

As to earth-closets.

37. Any enactment in force within the district of any local authority requiring the construction of a water-closet shall be deemed to be satisfied

by the construction, with the approval of the local authority, of an earth-closet. Section 37.

Any local authority may, as respects any house in which any earth-closet is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any water-closet in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract (*a*) with any person to undertake a supply of dry earth or other deodorising substance to any house within their district for the purpose of any earth-closet.

In this Act the term "earth-closet" includes (*b*) any place for the reception and deodorisation of fœcal matter constructed to the satisfaction of the local authority.

(*a*) See ss. 173, 174, *post*, as to this contract.

(*b*) As to the meaning of this word, see *ante*, p. 6.

38. (*a*) Where it appears to any local authority by the report of their surveyor (*b*) that any house (*c*) is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture trade or business, the local authority may, if they think fit, by written notice (*d*) require the owner or occupier (*e*) of such house, within the time therein specified, to construct a sufficient (*f*) number of water-closets earth-closets or privies and ashpits for the separate use of each sex. Privy accommodation for factories.

Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds and to a further penalty not exceeding forty shillings for every day during which the default is continued (*g*).

(*a*) Where s. 39 and the following sections of the P. H. A., 1907 (relating to closet accommodation), have been applied to any district, increased powers are given to a local authority. Later statutory provisions.

Where this section remains in force, it is supplemented as to factories and workshops by s. 9 of the Factory and Workshop Act, 1901, in App. I., *post*, Vol. II. Where, however, s. 22 of the P. H. A., 1890, is in force, the present section is repealed by sub-s. (4) thereof, and s. 9 of the Factory and Workshop Act, 1901, does not apply.

As to coal mines it was provided that "general regulations" should be made by the Home Secretary with respect to the provision and use of sanitary conveniences therein both above and below ground (Coal Mines Act, 1911, ss. 76, 86). As to the sanitary arrangements of public elementary schools reference may be made to a Memorandum of the L. G. B., dated February, 1910.

(*b*) In this section the surveyor only is referred to. His report will not conclude the authority; they have a discretion whether to act or not. A form of report will be found in Encyclopædia of Forms and Precedents, Vol. X., p. 505. By s. 5 of the Factory and Workshop Act, 1901, where it appears to an inspector under that Act that any act, neglect, or default, in relation to any drain, water-closet, earth-closet, privy, ashpit, water supply, nuisance or other matter in a factory or workshop, is punishable or remediable under the law relating to public health and not under that Act, the inspector shall give notice in writing of such act, neglect, or default to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the Duties of factory inspectors.

Note to Section 38.

notice, and take such action thereon as to that council may seem proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice. The inspector may, for the purposes of this section, take with him into a factory or workshop, a medical officer of health, inspector of nuisances, or other officer of the district council. It is further provided by the same section that where notice of an act, neglect, or default, is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken; and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs, and as are not recovered from any other person, and have not been incurred in any unsuccessful proceedings. This section does not, however, take away the power of the local authority to act on the report of their surveyor. See, also, the provisions of the Act of 1901, ss. 97—102, as to bakehouses, in Appendix I., *post*, Vol. II.

(*c*) See the definition in s. 4, *ante*, p. 20.

(*d*) See ss. 266 and 267, as to service and authentication of notices. For a form of notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 506.

(*e*) Under this section the occupier may be required to execute the works, as the occupier of a factory may be quite competent to attend to this complaint, and may be the proper person to remedy it.

Number of conveniences.

(*f*) The authority may properly specify the number which they think sufficient, but their decision will not conclude the question if the owner or occupier construct what he considers sufficient and the justices concur. Compare this section with the provisions of s. 36, and see notes to that section, *ante*, pp. 97—100. It is also to be noticed that, though the previous section applies to such a house as is herein described, it only requires a sufficient water-closet to be supplied. This section requires *separate* privies for the two sexes.

(*g*) As to the recovery of this penalty, see s. 251, *post*.

Public necessaries.

39. Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations (*a*), urinals water-closets earth-closets privies and ashpits (*b*), and other similar conveniences (*c*) for public accommodation.

Authority's discretion as to site.

(*a*) In *Biddulph* v. *St. George's, Hanover Square (Vestry of)* (1863), 33 L. J. Ch. 411; 8 L. T. 558, the defendants assuming to act under the corresponding section of the Metropolis Management Act, 1855, resolved to erect a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace. STUART, V.-C., being of opinion that the erection of a urinal at that spot would be a serious injury to the neighbouring property, upon bill filed by a resident nearly opposite to the proposed site, granted an interlocutory injunction restraining the vestry from erecting it. Upon appeal the Lords Justices, being of opinion that the evidence did not show that the proposed urinal would be in point of law a nuisance, or that the vestry were exceeding their statutory powers in what they proposed to do, or that they were influenced by improper motives, discharged the order. This decision was followed upon an interlocutory motion by STIRLING, J., in *Mogg* v. *Bocken* (1888), 5 T. L. R. 22. In *Mason* v. *Wallasey L. B.* (1876), 58 J. P. 477, JESSEL, M.R., held that in the absence of improper motives an absolute discretion was given to the authority in choosing the site. And see the decision of POLLOCK, B., in *Spicer* v. *Margate Corporation* (1880), 24 Sol. J. 821. But while the authority have a discretion, they will be controlled by the court if they act in an unreasonable manner by erecting a urinal where it would be a nuisance to the owners of adjoining property (*Vernon* v. *Vestry of St. James', Westminster* (1880), 16 Ch. D. 449), inasmuch as the words used in the section are "proper and convenient"; and see *Graham* v. *Newcastle-upon-Tyne Corporation* (No. 1) (1892), 67 L. T. 260, 790, a case of a covenant to keep a space "open and unbuilt upon." Each case will, therefore, depend on its own circumstances.

Where a local board assuming to act under this section erected a urinal partly upon a highway and partly upon a strip of land belonging to the plaintiff and so

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near to other adjoining land of hers as to be a nuisance to her and to her tenants, and to depreciate the value of her property, it was held that she was entitled to an injunction to restrain the board from continuing the urinal upon her land or so near thereto as to cause injury or annoyance to her and her tenants. It was held also that it was not a matter in which notice of action under s. 264 (now repealed) was required, nor was compensation under s. 308 the proper remedy (*Sellors* v. *Matlock Bath L. B.* (1885), 14 Q. B. D. 928). This case was followed in *Parish* v. *London Corporation* (1901), 67 J. P. 55; 18 T. L. R. 63, and in *Leyman* v. *Hessle U. D. C.* (1902), 67 J. P. 56; 19 T. L. R. 73, where a urinal erected twelve feet from the entrance gates of the plaintiff's house and grounds was ordered to be removed because, by reason of its position and construction, it would be a serious annoyance to the plaintiff and those inhabiting his house. In another case, plaintiff was the owner of high-class houses overlooking a public park, and the authority resolved to erect a urinal and lavatory in the park, about 230 feet from his nearest house, and in full view of them all. Plaintiff moved for an injunction to restrain them from erecting the proposed building so as to cause a nuisance to himself and his tenants, and proved that the letting value of his houses would be diminished, and that there were other sites more convenient, but failed to prove that any nuisance by smell was likely to arise. CHITTY, J., held that an injunction ought not to be granted in the absence of evidence of bad faith or arbitrary, perverse and vexatious conduct in selecting the site (*Pethick* v. *Plymouth Corporation* (1894), 58 J. P. 476; 70 L. T. 304). Again, where it was proposed to erect a lavatory for women close to the plaintiff's property at a seaside resort, and it appeared that the roof of the lavatory and its approaches, but not the entrance to it, would be visible from the plaintiffs' house, it was held upon the particular facts that the lavatory was required; that it was to be in a proper and convenient situation; that it would not be a nuisance, either public or private; and that although it might prove detrimental to the property of the plaintiffs, yet as the authority had acted reasonably and bonâ fide an injunction must be refused (*Mayo* v. *Seaton U. D. C.* (1903), 68 J. P. 7; 2 L. G. R. 127). For a recent case in which an authority submitted to an injunction in respect of a urinal in a passage adjoining a ladies' club, see *Halcyon Club, Ltd.* v. *Westminster Corporation* (1912), Times, November 14th, 16th. In *Mudge* v. *Penge U. D. C.* (1916), 80 J. P. 441, the defendants erected public conveniences for the use of both sexes on the site of a former convenience in the stable yard of a public house. Adjoining there was a terrace of five houses, and it was alleged that the erection caused a nuisance to the whole of these and an injunction to remove was applied for. It was held that some nuisance was caused to the two houses nearest the convenience, but as this could be abated by structural alterations an order to this effect was made. (The principle laid down in the above cases may be compared with that involved in *Goldberg* v. *Liverpool Corporation* (1900), 82 L. T. 362, and *Chaplin* v. *Westminster Corporation*, [1901] 2 Ch. 329; 65 J. P. 661; and see *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135.)

Conveniences in and under highways.

It appears from the judgment of LUSH, J., in *Vernon* v. *St. James'*, *Westminster* (*Vestry of*), *supra*, that under this section a urinal may be erected upon a highway. In such a case it is unnecessary to proceed under ss. 84 *et seq.* of the Highway Act, 1835, for the powers of the authority include the power of depriving the public of their right to traverse the highway to the extent of the encroachment. The authority are also entitled to excavate the soil of the highway to a reasonable extent for the purpose of constructing an overground convenience.

By a local Act a municipal corporation were empowered to erect in any street or public place or on land belonging to them, water-closets, urinals, and lavatories for the use of the public, and the word "street" in that Act had the same meaning as in the Public Health Acts. The corporation made in a public promenade, which was by another local Act free and open for public use, but was not a highway repairable by the inhabitants at large, certain water-closets, urinals, and lavatories, sunk to a depth of nine feet, and lighted by skylights level with the surface of the ground. The Court of Appeal held that, though the promenade was a public place, still as nothing had been dedicated to the use of the public except the surface, the soil under the surface could not be considered part of a public place or street within the meaning of the local Act, and that the corporation were not entitled to erect the conveniences in question (*Baird* v. *Tunbridge Wells Corporation*, [1894] 2 Q. B. 867). On appeal

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the House of Lords held that, even assuming the place to be a "street," the subsoil was not vested in the corporation, and that therefore they had no power to excavate the soil and erect lavatories below the surface of the street (*Tunbridge Wells Corporation* v. *Baird*, [1896] A. C. 434; 60 J. P. 788). See now s. 47 of the Act of 1907, *infra*.

In London it is provided by s. 44 of the Public Health (London) Act, 1891, that for the purpose of making public conveniences where they may deem them to be suitable, the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority. It was held that in the absence of any bad faith this section empowered an authority to make underground approaches to such conveniences from either side of the street in the nature of a subway, although such subway might be used by persons not using the conveniences (*Westminster Corporation* v. *L. & N. W. Rail. Co.*, [1905] A. C. 426; 69 J. P. 425). Section 45 of the same Act empowers an authority to let public lavatories. A metropolitan borough council constructed and maintained public underground lavatories beneath streets, and it was held by the Court of Appeal (MATHEW, L.J., dissenting) that the council were liable for land tax in respect thereof as "having or holding a tenement or hereditament" (*Westminster Corporation* v. *Johnson: Westminster Corporation* v. *Fuller*, [1904] 2 K. B. 737; 68 J. P. 549). And as to land tax on a "tube" railway beneath a street, *cf. Central London Rail. Co.* v. *City of London Land Tax Commissioners*, [1913] A. C. 364; 77 J. P. 289.

By s. 47 of the P. H. A., 1907 (if declared by the M. of H. to be in force in any district, and subject to such conditions or adaptions as may be specified in the Order: "The local authority may provide and maintain in proper and convenient situations sanitary conveniences in or under any street repairable by the inhabitants at large, and may provide and maintain in proper and convenient situations lavatories in or under any such street for the use of the public, and may employ and pay attendants and make reasonable charges for the use of any sanitary conveniences (other than a urinal) or of any lavatory so provided. The local authority may make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same. The local authority may let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper."

Conveniences and lavatories may, under s. 47 of the Act of 1907, be provided in *or under* streets repairable by the inhabitants. It is to be noticed, however, that the section does not vest the subsoil of the street in the authority for the purpose of this provision. *Cf.* s. 44 (2) of the London Act, *supra*, and *Westminster Corporation* v. *L. & N. W. Rail. Co.*, *supra*, decided thereunder. Consequently, the case of *Tunbridge Wells Corporation* v. *Baird*, *supra*, would appear to show that an authority must, if required, pay for the use of the subsoil of the street. It will be seen also that s. 47, *supra*, allows sanitary conveniences and lavatories to be let. *Cf.* s. 45 of the London Act, *supra*, and the cases of *Westminster Corporation* v. *Johnson* and *Westminster Corporation* v. *Fuller* cited in connection therewith.

Regulations, etc.

As to the power of an urban authority to make regulations and byelaws for the management and use of public sanitary conveniences, and to make charges for the use of *water-closets* in districts where the P. H. A., 1890, has been adopted, see s. 20 of that Act, *post*. See also s. 47 of the P. H. A., 1907, *supra*, as to the power to make *byelaws* and to make charges for the use of sanitary conveniences (other than urinals) and lavatories.

Conveniences outside district.

Under certain circumstances an urban authority may erect a public sanitary convenience on a site beyond the boundary of their district. The site must, however, be convenient to residents within the district, and the authority clearly have no power to encroach upon a highway in an adjoining district.

Rural authorities.

If a rural district council desire to provide public sanitary conveniences they must apply to the M. of H., under s. 276, for an order giving them the necessary urban powers, and if they wish to make regulations and byelaws for the management of the conveniences, or to charge fees, they must apply under s. 5 of the P. H. A., 1890, for powers under *ibid.*, s. 20 (see, however, *supra*, as to powers obtainable under the Act of 1907). The Ministry readily grant these powers in regard to the parish

or parishes in which action is proposed, if they are assured that suitable sites have been or can be secured, and proper facilities exist for drainage and a supply of water. The expenses are always declared in the order to be chargeable as special expenses. **Note to Section 39.**

(*b*) See the definition of *ashpit* in s. 11 of the P. H. A., 1890.

(*c*) See note to s. 45 as to this term being held to include refuse tips in certain circumstances.

40. Every local authority shall (*a*) provide that all drains water-closets earth-closets privies ashpits and cesspools within their district be constructed and kept so as not to be a nuisance or injurious to health. Drains, privies, etc., to be properly kept.

(*a*) There is no provision in the Act, unless s. 299, *post*, applies, for compelling performance of this duty.

41. On the written application of any person (*a*) to a local authority, stating that any drain (*b*) water-closet earth-closet privy ashpit or cesspool on or belonging to any premises within their district is a nuisance (*c*) or injurious to health (but not otherwise) (*d*), the local authority may, by writing (*e*), empower their surveyor or inspector of nuisances, after twenty-four hours' written notice (*f*) to the occupier of such premises, or in case of emergency (*g*) without notice, to enter (*h*) such premises, with or without assistants, and cause the ground to be opened, and examine such drain water-closet earth-closet privy ashpit or cesspool. If the drain water-closet earth-closet privy ashpit or cesspool on examination be found to be in a proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain water-closet earth-closet privy ashpit or cesspool on examination shall appear to be in bad condition, or to require alteration or amendment (*i*), the local authority shall forthwith cause notice in writing (*k*) to be given to the owner or occupier (*l*) of the premises requiring him forthwith or within a reasonable time (*m*) therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default (*n*), and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses (*o*) incurred by them in so doing, or may by order declare the same to be private improvement expenses (*p*). Examination of drains, privies, etc. on complaint of nuisance.

Additional powers for the testing of drains may be obtained by the application in any district of the P. H. A., 1907, s. 45. Additional powers under P. H. A., 1907.

By s. 46 of the same Act additional powers in connection with cesspools, ashpits, etc., wells or disused wells, may be obtained. See also s. 34 of the same Act, referred to in note (*d*), *infra*.

(*a*) The written application required by s. 41, *supra*, need not necessarily proceed from some person other than the authority's surveyor or inspector of nuisances (*Wood Green U. D. C.* v. *Joseph*, [1907] 1 K. B. 182; 71 J. P. 89). This case was affirmed in both the Court of Appeal and the House of Lords, the point for which it is now cited not being seriously contested. For a form of application, see Encyclopædia of Forms and Precedents, Vol. X., at p. 542. Who may apply.

(*b*) See the definition of a "drain" in s. 4, *ante*, p. 24. For the purposes of this section the expression has an extended meaning in districts where s. 19 of the

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P. H. A., 1890, is in force. By that section: "(1) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain, an application may be made under section forty-one of the Public Health Act, 1875 (relating to complaints as to nuisances from drains), and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction; (2) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly; (3) For the purposes of this section the expression 'drain' includes a drain used for the drainage of more than one building." See this section and the notes thereto, *post.*

"Single private drains."

Nuisance *or* injurious to health.

(*c*) From the construction which has been placed on similar language in ss. 47, 91, it may be inferred that if the nuisance complained of consists of something offensive to the senses, it is not necessary that it should *also* be injurious to health. See *Malton Urban Sanitary Authority* v. *Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302; 44 J. P. 155; *Banbury L. B.* v. *Page* (1881), 8 Q. B. D. 97; 46 J. P. 184; *Bishop Auckland L. B.* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; 47 J. P. 389). See as to the liability of an owner or occupier for damage done by the escape of sewage in consequence of a defective drain on his premises, *Humphries* v. *Cousins* (1877), 2 C. P. D. 239; 41 J. P. 280; *Holland* v. *Lazarus* (1897), 66 L. J. Q. B. 285; 61 J. P. 262.

(*d*) Where s. 34 of the P. H. A., 1907, has been applied to any district, s. 41, *supra*, is to have effect as if for the words "but not otherwise" there were substituted the words "or when on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit or cesspool is a nuisance or injurious to health."

Notices.

(*e*) This might be under the hand of the clerk, and a notice of the authority entered on the council's minutes, or it might be under the seal of the council. See a form in Encyclopædia of Forms and Precedents, Vol. X., at p. 543.

(*f*) Query, who is to give this notice? Apparently either the clerk, or surveyor, or inspector of nuisances, under the direction of the authority. As to the authentication and service of the notice, see ss. 266, 267, *post.* A form of notice will be found in Encyclopædia of Forms and Precedents, Vol. X., at p. 543.

The giving of this notice is not a condition precedent to the right of the authority to recover expenses incurred in remedying a nuisance (*Bromley Borough Council* v. *Cheshire*, [1908] 1 K. B. 680; 72 J. P. 34).

"Emergency."

(*g*) The authority will determine in the first place whether there is a case of emergency, but, *semble*, this might be disputed in an action for trespass. There should be an entry on the minutes to the effect that the particular case is one of emergency.

Power of entry.

(*h*) Whether, if admission be refused, a penalty is incurred for "obstructing" the officer unless he has obtained a justice's order, see 77 J. P. N. 325, 556.

Section extends to structural defects.

(*i*) The section applies to every case where the fact that a drain is in bad condition, or requires alteration and amendment, causes the drain to be a nuisance or injurious to health, even though the alteration or amendment necessary to abate the nuisance may involve an alteration of the structure, and in places where the P. H. A., 1890, is in force, s. 19 of that Act applies the section to the same extent to every drain which is a "single private drain" (*Southwold Corporation* v. *Crowdy* (1903), 67 J. P. 278; 1 L. G. R. 899, distinguishing *Fulham* (*Vestry of*) v. *Solomon*, [1896] 1 Q. B. 198; 60 J. P. 72). In the latter case, KENNEDY, J., had said: "In my view, the words 'is found not to be in proper order or condition' in s. 40 (2), and 'appears to be in bad order or condition' in s. 41 (2) of the Public Health (London) Act, 1891, do not refer to defects in the structure; nor do the words 'require alteration or amendment' in the last mentioned sub-section, refer to structural alteration." It should, however, be observed that the dictum of KENNEDY, J., is clearly due to a context in the London Act dealing specifically with structural matters as alternative to questions of condition. Moreover, as was pointed out in the *Southwold Case*, *supra*, he was not dealing with a case where the bad order and condition were

alleged to make a thing (in that case, a water-closet) of itself a nuisance. The water-closet was constructed before the authority had passed byelaws relating to the construction of water-closets, and was not constructed in the manner which the byelaws subsequently passed required. It was held that the byelaws had no application, and that, even supposing they applied, the proceedings were not proper to enforce them. **Note to Section 41.**

(*k*) See ss. 266, 267, *post*, as to authentication and service of this notice. For a form of notice, see Encyclopædia of Forms and Precedents, Vol. X., at p. 544.

(*l*) See s. 306, *post*, under which the owner may be empowered to enter to do these works if the occupier prevents him. It will be observed that the notice may be given to either the occupier or the owner, although by a subsequent clause the expenses incurred by the authority in doing the works are to be recovered from the owner only. In an action for a nuisance arising out of defective drains, the occupier and not the owner is primâ facie liable (*Russell* v. *Shenton* (1842), 3 Q. B. 449), but the owner may be liable on indictment if it appears that he erected the building, etc. so as to create the nuisance, or so that it was likely to produce a nuisance after it had been let to a tenant (*R.* v. *Pedly* (1834), 1 A. & E. 822). And see notes to s. 94, *post*, p. 180. Owner *or* occupier.

Where several houses belonging to different owners are drained by a single private drain, which becomes a nuisance and injurious to health, and the authority, acting under this section, and s. 19 of the Act of 1890, serve upon each of the owners a notice addressed to them jointly to do the necessary works for the abatement of the nuisance, the fact that any one of such owners would be compelled to go upon the premises of the others in order to execute the necessary works, is no bar to the validity of the notice. Therefore, the authority, upon non-compliance with the notice, are entitled to execute the works themselves, and recover the expenses from the owners in the manner provided by s. 19 (*Lancaster* v. *Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405; but *cf. Haedicke* v. *Friern Barnet U. D. C.*, cited in the notes under s. 19 of the P. H. A., 1890).

(*m*) In *Hornsey Corporation* v. *Kershaw* (1909), 73 J. P. 335, Middlesex Quarter Sessions held a notice to do work within seven days to be an unreasonable and therefore invalid one.

(*n*) See s. 251, *post*, as to the recovery of this penalty.

(*o*) As to the recovery of these expenses, see note (*e*) to s. 21, *ante*, p. 81. The order of the authority is conclusive and cannot be controlled or altered by the justices in proceedings to enforce payment, though an appeal will lie to the M. of H. under s. 268, against a demand for payment (being a "notice of decision"), *post*. See the notes to s. 36, *ante*, p. 96, and see also *Willesden U. D. C.* v. *Taylor* (1916), 80 J. P. N. 65. Recovery of expenses.

In *Hornsey Corporation* v. *Kershaw* (1909), 73 J. P. 335, Middlesex Quarter Sessions held that in a case under s. 41 and s. 19 of the Act of 1890, an appeal lay to sessions against a decision of justices who had refused to order an owner to pay his apportioned share of expenses, on the ground of the unreasonableness of the notice. The appeal failed.

In *Walthamstow U. D. C.* v. *Henwood*, [1897] 1 Ch. 41; 61 J. P. 23, the plaintiffs, who had given notice to an owner to do what was necessary to abate a nuisance under this section, and, on his default, had executed the works, obtained a declaration that they were entitled to a charge on the land and premises in respect of the sum apportioned together with interest and costs, the amount to be raised, if necessary by sale in chambers.

(*p*) See s. 213, *post*.

SCAVENGING AND CLEANSING.

Regulations as to Streets and Houses.

42. Every local authority may, and when required by order (*a*) of the Local Government Board shall, themselves undertake or contract for (*b*)—

The removal of house (*bb*) refuse from premises;

The cleansing of earth-closets privies (*c*) ashpits and cesspools (*d*); either for the whole of any part of their district: Moreover every urban Local authority to provide for cleansing of streets and removal of refuse.

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authority and any rural authority, invested by the Local Government Board with the requisite powers (*e*) may, and when required by order of the said Board shall, themselves undertake or contract for (*f*) the proper cleansing of streets (*g*), and may also themselves undertake or contract for the proper watering (*g*) of streets for the whole or any part of their district (*h*).

All matters collected by the local authority or contractor in pursuance of this section may be sold (*i*) or otherwise disposed of (*ii*) and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits (*k*) thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate (*l*) out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds (*m*): Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance (*n*).

Order of Local Government Board: how enforced.

(*a*) It may be (see *R.* v. *Walker* (1875), L. R. 10 Q. B. 355; 39 J. P. N. 438), that if such an order be disobeyed the authority may be indicted for a misdemeanor. It is not like an Order of the L. G. B. under the Poor Law Amendment Acts, which was made enforceable by penalties under 4 & 5 Will. 4, c. 76, s. 99. Procedure under s. 299 (*post*), however, would not apply to a neglect of this duty.

Incidence of expenses.

The expenses incurred by an urban authority under this section in removing refuse, etc., are chargeable as part of their ordinary expenses under the Act (to the general district rate if one is levied). If the work is restricted to part of the district the urban council may avail themselves of s. 211 (4) of the Act. A rural council cannot restrict the incidence of expenses to a smaller area than the contributory place even with the assistance of the M. of H. under s. 229. It is true that under s. 277 a "special drainage district" may be formed by resolution for the purpose of charging thereon exclusively the expenses of sewerage, water supply, or *other works*, but such districts become new rating areas for all the purposes of the Act (see s. 229), and the Ministry require very strong grounds to be shown before approving such a district—usually in connection with sewerage schemes involving considerable capital expenditure.

(*b*) For a form of contract see Encyclopædia of Forms and Precedents, Vol. X., p. 586.

The M. of H. hold that a local authority have no statutory power to make and enforce a charge upon occupiers for removing house refuse or cleansing any of the receptacles mentioned in the section; but see *Leck* v. *Epsom R. D. C.*, [1922] 1 K. B. 383; 86 J. P. 56.

As to the removal of refuse from mews, and other premises see s. 50, *post*, p. 118.

Byelaws to facilitate removal.

In districts where the P. H. A., 1890, s. 26, is in force, if the authority themselves undertake or contract for the removal of house refuse they may make byelaws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the authority undertake or contract for. See the section and the notes thereto, *post*.

What is "house refuse" or retrade "fuse."

(*bb*) "House refuse" does not extend to dust and ashes, the exclusive produce of manufactories (*Lyndon* v. *Standbridge* (1857), 2 H. & N. 45. And see *Law* v. *Dodd* (1848), 1 Ex. 845). Ashes arising from coals burnt in the furnace of a steam-engine used for the purpose of sawing and lifting timber and other materials for

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carrying on the business of a pianoforte manufacturer, were held not to be house refuse in *Gay* v. *Cadby* (1877), 2 C. P. D. 391 ; 41 J. P. 503. Under the Metropolis Management Acts a local authority was held bound to remove refuse from a workhouse, although such workhouse was by a local Act rated at a less amount than other property in the parish (*Holborn Union* (*Guardians of*) v. *St. Leonard's* (*Vestry of*), *Shoreditch* (1876), 2 Q. B. D. 145 ; 40 J. P. 740).

Under the Metropolis Management Acts it was held that a local authority were not bound to remove articles improperly placed in a dustbin, such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." Where such articles were removed, and were afterwards appropriated by servants of the authority, it was held that the contractor who had purchased and undertaken to dispose of the house refuse was not entitled to compensation in respect of them, on the ground that his contract only included such refuse as the authority were bound to remove (*Collins* v. *Paddington* (*Vestry of*) (1879), 48 L. J. Q. B. 345 ; 43 J. P. 367).

A magistrate decided that ashes from the furnaces of an hotel were not "refuse of trade" within the Metropolis Management Act, 1855, s. 129, and declined to state a case on the ground that his decision was by the section final and conclusive and that no point of law arose. It was held that there was a point of law involved, and he was required to state a case (*R.* v. *Bridge* (1890), 24 Q. B. D. 609 ; 54 J. P. 629). On a case being stated, it appeared that the appellants had refused to remove from the respondent's hotel, unless paid a reasonable sum for so doing, the ashes and clinkers produced in the furnaces of boilers used to generate steam for supplying power for the electric lighting of the hotel, for heating the public rooms and passages, for cooking, and for working the lift and pumping water. It was held that the ashes and clinkers were domestic refuse, and not the refuse of a trade manufacture or business (*St. Martin's Vestry* v. *Gordon* (1890), 59 L. J. M. C. 131 ; 54 J. P. 791 ; affirmed, [1891] 1 Q. B. 61 ; 55 J. P. 437). On the other hand, under the present section (s. 42), clinkers from the boilers of a steam laundry were held not to be "house refuse" in *London and Provincial Laundry Co.* v. *Willesden L. B.*, [1892] 2 Q. B. 271 ; 56 J. P. 696.

The Public Health (London) Act, 1891, s. 141, defines "house refuse" as meaning ashes, cinders, breeze, rubbish, night soil, and filth, but not including trade refuse ; and "trade refuse" as meaning the refuse of any trade, manufacture or business, or of any building materials.

A sanitary authority in the metropolis refused to remove from a large hotel the refuse, consisting of ashes from the grates, sawdust strewn on the kitchen floors for the sake of cleanliness, empty bottles and tins of the sauces and various comestibles used in the kitchen, straw-packing cases for bottles, tea leaves, waste paper, egg shells, lemon peel, the general dust from the rooms and staircases, and from time to time small quantities of broken crockery-ware and glass, on the ground that it was "trade refuse." Upon a question raised under s. 33 (2) of the Public Health (London) Act, 1891, a Divisional Court held (affirming the magistrate's decision) that the refuse was "house refuse" within s. 30 of that Act, and that the authority were bound to remove the same without payment (*Westminster Corporation* v. *Gordon Hotels Co.*, [1906] 2 K. B. 39 ; 70 J. P. 258). The Court of Appeal and House of Lords held that the decision of a magistrate under s. 33 (2) upon the question whether particular refuse is or is not trade refuse is final. See [1908] A. C. 142 ; 72 J. P. 201 ; *cf. Wills* v. *McSherry* (No. 2), [1914] 1 K. B. 616 ; 78 J. P. 120, and *Kydd* v. *Liverpool Watch Committee*, [1908] A. C. 327 ; 72 J. P. 395. In *Vestry of St. Margarets* v. *Queen Anne Mansions Co.* (1893), 57 J. P. N. 277, it was held that the clinkers and ashes from the furnaces of an electric light plant supplying current to residential flats was trade refuse within the meaning of s. 33 of the P. H. (London) Act, 1891. In a later case the appellants were the occupiers of premises which they used as a tea-shop, providing customers with refreshments and food for consumption on the premises, some of the food being cooked or prepared on the premises. No one slept on the premises at night. The refuse from the premises consisted of ashes and clinkers, coffee grounds, newspaper, cabbage leaves, egg-shells, dust, and general dirt, broken crockery, tea leaves, potato parings, scrapings from the sink, and sweepings from rooms. It did not include scraps left by customers, which were given away

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in charity. Upon a question raised under s. 30 (2), it was held that the refuse was "house refuse," and not "trade refuse," and that therefore the authority were bound to secure its due removal (*Lyons & Co., Ltd.* v. *London Corporation*, [1909] 2 K. B. 588; 73 J. P. 372).

Removal of "trade refuse" under P. H. A., 1907.

Where s. 48 of the P. H. A., 1907, is in force in any district in pursuance of an order of the M. of H., the local authority may be required to remove trade refuse in consideration of the payment of a reasonable charge. See that section and notes thereto, *post*.

Explosives in dustbins, etc.

The Home Secretary, acting under the Explosives Act, 1875, ss. 37, 39, has made an Order, dated October 28th, 1904, in the following terms: "(1) Explosive shall not be deposited in any receptacle or place appropriated for refuse, and shall not be handed or forwarded to any dustman or other person employed in the removal of refuse, unless due notice has been given to such dustman or person, or to the dustman or person whose duty it is to remove refuse from such receptacle or place. (2) Explosive shall not be conveyed in any carriage or boat appropriated for the removal of refuse. In the event of any breach (by any act or default) of the foregoing byelaws, or an attempt to commit such breach: The person committing the offence shall be liable to a penalty not exceeding, in the case of the first offence, £10, and in the case of the second offence or any subsequent offence, £20, and also the following persons, viz., the owner of the carriage or boat in respect of which, or containing the explosive in respect of which, the offence is committed, the person in charge of such carriage, and the person owning such explosive, shall each be liable to a similar penalty, unless he proves that he had supplied proper means and issued proper orders for the observance, and used due diligence to enforce the observance, of these byelaws."

Broken glass in dustbins.

As to broken glass, etc. in refuse, see notes to the P. H. A., 1890, s. 26, *post*.

(*c*) An authority cannot undertake the cleansing of such privies only as meet their approval. See *Pegg and Jones, Ltd.* v. *Derby Corporation*, on p. 112, *post*.

Cleansing of privies and cesspools.

Where a local authority has taken upon itself, under this section, the cleansing of privies belonging to cottage property, but has, after notification of an outbreak of typhoid fever, failed to eradicate fever germs, which have penetrated crevices in the brickwork, and cause a nuisance, such authority cannot, under s. 94, call upon an owner of the property to abate the nuisance by abolishing privies and substituting water-closets (*Barnett* v. *Laskey* (1899), 68 L. J. Q. B. 55; 63 J. P. 5).

(*d*) The defendants undertook under this section the duty of cleansing the cesspools of their district. For this purpose they contracted for the removal of the sewage from the cesspools, the contractor using the defendants' sewage cart and depositing the filth upon the lands of neighbouring farmers by arrangement which he made with them. The defendants did not instruct him where to deposit the sewage. The contractor, without the permission of the plaintiffs, deposited sewage removed from the cesspools upon the plaintiffs' land, causing a nuisance to them and their tenants. In an action for an injunction and damages, it was held that the defendants were liable (*Robinson* v. *Beaconsfield R. D. C.*, [1911] 2 Ch. 188; 75 J. P. 353).

An authority made a byelaw that every occupier of premises should once at least in every three months cleanse every cesspool belonging to such premises. Subsequently the authority passed a resolution that "the scavenging of privies, closets and ashpits be undertaken by the board at once." Tenders were obtained and the work carried out under contracts. Certain owners and occupiers of premises on which there was a cesspool used to empty and cleanse the cesspool, but afterwards ceased to do so and contended that the obligation was on the authority. It was held that the words of s. 42 must be read distributively, and that an authority may undertake or contract for the cleansing of earth-closets, privies, ashpits and cesspools, or such of them as they may by resolution decide to deal with, and that, therefore, there was no obligation on the authority to empty and cleanse the cesspool (*Stainland and Holywell Green Industrial Corn and Provision Society* v. *Stainland with Old Lindley U. D. C.*, [1906] 1 K. B. 233; 70 J. P. 150; *Leck* v. *Epsom R. D. C.*, [1922] 1 K. B. 383; 86 J. P. 56; 20 L. G. R. 173).

Under s. 46 of the P. H. A., 1907 (if it be applied in the district of any local authority) a cesspool which is prejudicial to health or otherwise objectionable for sanitary reasons, may be required to be filled up, removed or altered.

Rural authorities.

(*e*) See s. 276, *post*. Orders conferring these powers on rural authorities usually declare the expenses to be special.

Without, however, being invested with urban powers it would seem that a rural

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authority, now that they are the highway authority of their district (see s. 25 of the L. G. A., 1894), may water streets to the extent required for purposes of proper maintenance; and charge the expenses as general under s. 29 of the L. G. A., 1894.

Terms of contract.

(*f*) See form of agreement as to supply of horses, etc. for this purpose in Encyclopædia of Forms and Precedents, Vol. X., p. 593. In *Moon* v. *Camberwell Borough Council* (1903), 68 J. P. 57; 89 L. T. 595, the plaintiff entered into a contract with the defendants whereby he agreed to supply horses, harness, etc. for scavenging work during the period of one year "whenever thereto required" by the defendants' engineer. The conditions annexed to the contract provided that the defendants might, if they thought proper, without in any way vitiating the contract, execute on their own account, or employ other contractors to execute, any works ordered by them. Some time before the expiration of the period covered by the contract the defendants ceased to employ the plaintiff, and gave the work to another contractor. In an action to recover damages for breach of contract, it was held that there was no obligation, either express or implied, on the part of the defendants to employ the plaintiff.

(*g*) It will be observed that the authority's operations need not be confined to streets repairable by the inhabitants at large. The cleansing and watering of private streets by the authority does not affect their right to recover private improvement expenses. See also s. 148.

Cleansing and watering streets.

(*h*) Note the distinction. The authority may be compelled to cleanse the streets, but may water the streets at their discretion. See also notes to s. 43, *post*, p. 112.

The powers of s. 42 (as to street *watering*) do not enable district councils to undertake the tarring of roads for dust prevention. Such work must be done in pursuance of the council's ordinary highway powers. As regards main roads maintained by the county council, a district council are empowered to contribute to the expense under s. 3 of the Highways and Bridges Act, 1891, the operation being regarded as an improvement of the roads. As to main roads maintained by a district council under s. 11 of the L. G. A., 1888, it is possible that the arrangement with the county council provides for the matter. A rural district council who succeeded a highway board may restrict the incidence of expense to parishes specially benefited under the proviso to s. 3 of the Act of 1891; but under all other circumstances there is a difficulty in doing so, the M. of H. being indisposed to declare (under s. 49 of the P. H. A., 1890) any expenses special which are distinctly highway expenses, in view of s. 29 (a) of the L. G. A., 1894.

(*i*) See *Collins* v. *Paddington* (*Vestry of*), cited on p. 109, *ante*.

Disposal of refuse.

(*ii*) See s. 45, *post*, p. 115, as to providing place of deposit. Matters collected must not be disposed of so as to cause injury to other persons. In *Atkinson* v. *Corporation of Huddersfield* (Times, April 20th, 1893), CHITTY, J., granted an injunction against the defendant corporation from discharging snow, street sweepings, and other refuse into a river at a point above the mills of the plaintiffs so as to cause injury to the plaintiffs by the pollution of the river. In *Jones* v. *Welshpool Corporation*, Times, Nov. 18th, 1904, a nuisance arising from a field on which refuse was tipped was restrained by the granting of a perpetual injunction restraining further tipping so as to cause or occasion any nuisance to the plaintiff, the defendants undertaking within fourteen days to cover with road sweepings or earth such portions of this heap of refuse as had not already been so covered. In *Priest* v. *Manchester Corporation* (1915), 84 L. J. K. B. 1734; 13 L. G. R. 665, the defendants bought land for the purpose of tipping refuse thereon. Subsequently the vendor sold the remaining portion to a purchaser who formed a street and built houses abutting thereon. The defendants acting under their powers from time to time deposited refuse on the land purchased by them, and this gradually increasing in bulk and becoming impervious to surface water caused such water which previously flowed away from the street, to be diverted and overflow into the street and form holes, ruts, or gullies dangerous to users of such street. The plaintiff whilst crossing the street fell into one of these gullies and was injured. *Held*, that the gully in the street was a nuisance caused by the defendants without justification and that the defendants were liable in damages. *Held*, further, that where a local authority purchases land for the purpose of tipping refuse thereon such purchase does not impliedly authorise the local authority to tip in such a way as to cause a nuisance on adjoining land

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retained by the vendor when such tipping can be done without causing a nuisance. Whether if it were impossible to use the land for tipping purposes without creating a nuisance the local authority would be so authorised, *quære.* See also *Robinson* v. *Beaconsfield R. D. C.*, in note (*d*), *supra*; *Att.-Gen.* v. *S. E. & C. Rail. Co.'s Managing Committee*, cited in note (*g*) under s. 91, *post*, p. 170, and cases in notes to ss. 44, 45, pp. 113—115. The M. of H. hold that a L. A. can properly utilise surplus products of a destructor in manufacturing useful articles such as paving slabs and mortar provided that the manufacture is primarily for their own use and not for the purposes of sale.

Profits.

(*k*) It is presumed that the contractor may contract to receive these matters for his own profit, and thereby reduce the amount otherwise payable to him.

(*l*) *I.e.*, to the credit of the common fund of the rural district or of the separate rate for special expenses, as the case may be. See note (*e*).

(*m*) As to the recovery of this penalty, see s. 251, *post*; and see *Borrow* v. *Howland* (1896), 60 J. P. 391; 74 L. T. 787.

Retention of valuable refuse.

(*n*) It is not enough that the matters are produced upon the premises; they must be intended to be removed for sale or for use, *e.g.*, for manure, and until removed they must be kept so as not to create a nuisance; so that if the matters create a nuisance, which word must here, it is presumed, signify a public nuisance, the authority or the contractor may remove them and must not be obstructed.

Under 57 Geo. 3, c. 29, ss. 59, 60, the scavenger of a metropolitan district was entitled to take away from houses and premises "their soil, ashes, cinders, rubbish, dust, dirt and filth." It was held that these words included only such dust, etc. as were, in the contemplation of the owners, rubbish or refuse, and which they desired to dispose of in that character. Therefore, where brewers burnt coals in the process of brewing, which coals were only partially consumed by having once passed through the fires, and removed them mixed with the dust and ashes arising from the same fires to other premises, where they used them for heating water to cleanse their casks, it was held that the scavenger was not entitled to claim any of the articles so removed (*Filbey* v. *Combe* (1837), 2 M. & W. 677). See also *Law* v. *Dodd* (1848), 1 Ex. 845.

Penalty on neglect of local authority to remove refuse, etc.

43. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earth-closets privies ashpits and cesspools fail, without reasonable excuse (*a*), after notice in writing (*b*) from the occupier of any house within their district (*c*) requiring them to remove any house refuse or to cleanse any earth-closet privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period (*d*).

Reasonable excuse.

(*a*) It may be that if an authority could show that though they had once undertaken, etc. they had abandoned the work for good reasons, this would be a reasonable excuse. An authority were summoned under this section for failing without reasonable excuse to cleanse the privies in a factory after having undertaken the cleansing of privies in their district. A local Act provided that all privies should be subject to the approval of the authority, but the privies in question had not been approved by them as they did not satisfy their requirements. The authority had themselves undertaken the cleansing of all privies which had received their approval. It was held, that although s. 42 authorised an authority to undertake the cleansing of privies "either for the whole or any part of their district," this did not empower them to undertake the cleansing merely of such privies as had received their approval; that the authority must be treated as having undertaken the cleansing of all privies in their district, and that the non-approval of the privies in question was not a reasonable excuse for failure to cleanse them (*Pegg and Jones, Ltd.* v. *Derby Corporation*, [1909] 2 K. B. 511; 73 J. P. 413). The decision of a local authority to cleanse cesspools once in every three months may afford a reasonable excuse within the meaning of this section. See *Leck* v. *Epsom R. D. C.*, [1922] 1 K. B. 383; 86 J. P. 56.

(*b*) It is not clear how this notice is to reach an authority, who meet only at intervals. The suggestion which occurs, is that it should be served upon their clerk at their offices. For a form of notice, see Encyclopædia of Forms and Precedents, Vol. X., at p. 589. **Note to Section 43.** Notice.

(*c*) It is presumed that the word "district" must be read as "part of district" when the authority have availed themselves of their powers under the preceding section to limit their operations to a defined portion of their district. It is understood that this was the view taken by the L. G. B. "District."

(*d*) See as to the recovery of this penalty, s. 251, *post*. It is presumed that the justices can settle the amount of the penalty to be paid by the authority. The corporate property of the authority, whether urban or rural, would be liable to a distress for the payment of this penalty. Having regard to the penalty imposed by this section, it may be doubted whether an occupier could maintain an action for damages through the failure to remove refuse, etc. See *Ellis* v. *Strand District Board of Works* (1892), 67 L. T. 307; 8 T. L. R. 739, and *Saunders* v. *Holborn District Board of Works*, [1895] 1 Q. B. 64. Recovery of penalty.

44. Where the local authority do not themselves undertake or contract for— Power of local authority to make byelaws imposing duty of cleansing, etc. on occupier.

The cleansing of footways and pavements (*a*) adjoining any premises,

The removal of house refuse (*b*) from any premises,

The cleansing of earth-closets privies ashpits and cesspools belonging to any premises (*c*),

they may make byelaws (*d*) imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

An urban authority may also make byelaws (*d*) for the prevention of nuisances (*e*) arising from snow filth dust ashes and rubbish (*f*), and for the prevention of the keeping of animals (*g*) on any premises so as to be injurious to health.

(*a*) These are included under the term "streets" in s. 42. The authority may contract for the cleansing of the road, and make byelaws for the cleansing of footways and pavements, but cannot make byelaws for the cleansing of the roads. "Pavements."

(*b*) As to what is "house refuse," see s. 42, note (*bb*), *ante*, p. 108. See *Borrow* v. *Howland* (1896), 60 J. P. 391; 74 L. T. 787, as to the liability of an occupier under s. 16 of the Public Health (London) Act, 1891, to a penalty for refusing to allow scavengers to enter his premises for the removal of refuse. "House refuse."

(*c*) For the purpose of the exercise of this power to make byelaws the words of the section must be read distributively. See *Stainland, etc. Society* v. *Stainland with Old Lindley U. D. C.*, cited in the notes to s. 42, *ante*, p. 110. "Earth-closets, etc."

(*d*) Byelaws under s. 44 may be made for part of the district, while the authority themselves do the work (under s. 42) in the remainder of the district. A difficulty occurs, however, as regards the expenses of the authority in such a case, particularly in the case of a rural authority, who have not the same powers in regard to a contributory place as an urban authority have for their district under s. 211 of creating a separate area for rating purposes. Byelaws generally.

As to the making, confirmation and enforcement of byelaws, see ss. 182—184, and s. 251. Byelaws under this section are unnecessary if, by the operation of any local Act, ss. 87—98 of the Towns Improvement Clauses Act, 1847, are in force within the district. Byelaws under this section are confined to the imposing of the duty. It does not authorise any direction as to the manner of cleansing, except as regards prescribing the intervals. Byelaws under other statutes.

Where the P. H. A., 1890, s. 26, is in force, the authority may make byelaws: "(a) For prescribing the times for the removal or carriage through the streets of any fœcal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district: (b) For providing that the vessel, receptacle, cart, or carriage used therefor

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shall be properly constructed and covered so as to prevent the escape of any such matter or liquid: (c) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage." See the section and the notes thereto, *post*.

(*e*) See further, the provisions of s. 91, as to nuisances arising out of some of these matters.

Byelaws as to filth nuisances and keeping animals.

(*f*) Sweeping mud into a sewer was held to be an offence against 18 & 19 Vict. c. 120, s. 205, which forbids the sweeping into any sewer of any "soil, rubbish, or filth, or any other thing" (*Metropolitan Board of Works* v. *Eaton* (1884), 48 J. P. 611; 50 L. T. 634).

A railway company received in their goods yard a truck of manure, which had been carried by them in the ordinary course of their business. It arrived on Sunday, and notice was at once given to the consignee, who proceeded to remove it on Monday; on being emptied it gave forth a very offensive smell. The company were convicted under the following byelaw: "No person shall deposit, throw or allow to run, lodge, or accumulate upon the surface of any street, square, court, highway, or place, or on any waste or unoccupied ground, or on any uncovered drain, ditch, watercourse, sink, pond, or other collection of water, or expose or cause to be exposed in any other manner whatever within the district, any animal or vegetable matter, fish, offal, ordure, blood, bones, manure, shells, broken glass, china, or earthenware, dust, ashes, house refuse, waste, or runnings from any manufactory, or other offensive or noxious matter whatever":—*Held*, that the conviction was wrong (*L. B. & S. C. Rail. Co.* v. *Haywards Heath U. D. C.* (1899), 80 L. T. 266).

(*g*) In *Everett* v. *Grapes* (1861), 25 J. P. 644; 3 L. T. 669, it was held, under 5 & 6 Will. 4, c. 76, s. 90, that a byelaw aimed against keeping pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad. But in *Wanstead L. B.* v. *Wooster* (1873), 37 J. P. 403; 38 J. P. 21, a byelaw against keeping pigs within one hundred feet of a dwelling-house was held to be valid on the ground that in a town the doing so was likely to be a nuisance that it might be prohibited altogether. It was also decided that the byelaw might require the removal of filth, etc. without any previous requisition by the authority. But the principle of this decision was held to apply only to urban and not to rural districts. Therefore, where a rural authority having urban powers under this section made a byelaw prohibiting the keeping of swine within fifty feet of any dwelling-house within the district, it was held that the byelaw was unreasonable and bad (*Heap* v. *Burnley Union* (1884), 12 Q. B. D. 617; 48 J. P. 359). COLERIDGE, L.C.J., said that it was impossible to attempt to lay down what under all circumstances would be a reasonable byelaw; but it seemed to him unreasonable to say, that in country districts nobody should keep a pig within fifty feet of his dwelling-house. Following this decision the M. of H. do not confirm any byelaw prohibiting absolutely in rural districts the keeping of pigs within a specified distance of any dwelling-house. They usually suggest a byelaw making the prohibition dependent upon the manner in which the sty or place in which the pigs are kept is maintained. The corresponding section of the Public Health (Ireland) Act, 1878, s. 54, enables urban authorities to make byelaws for "the regulation of the keeping of animals on any premises, or for the prevention of such keeping, so as to be injurious to health." A byelaw under this section that: "No swine shall be kept in any yard within a distance of twenty-one feet from a dwelling-house or public building or any building in which any persons may be or may be intended to be employed in any manufacture, trade, or business without the special permission of the sanitary authority," was held valid (*Lutton* v. *Doherty* (1885), 16 L. R. Ir. 493).

It is not necessary in order to procure a conviction under such a byelaw that a nuisance has been caused by the breach of it (*Tong Street L. B.* v. *Seed* (1874), 39 J. P. 278). A byelaw made by an urban authority imposed a penalty for keeping swine within fifty yards of a dwelling-house. The defendant, in the course of his business, on receiving orders for pigs, used to bring them into the urban district within fifty yards of a dwelling-house in the morning and keep them there till the evening, when they were sent off by railway or otherwise. The pigs were not fed on the premises nor allowed to remain there at night. It was held that there was, nevertheless, a "keeping" of the swine within fifty yards of the dwelling-house,

contrary to the byelaw (*Steers* v. *Manton* (1893), 57 J. P. 584). See further, as to keeping pigs, s. 47 (1), *post*, p. 116. **Note to Section 44.**

The L. G. B. stated that they did not consider that cock crowing could be dealt with by a byelaw under this section. See s. 91, *post*, p. 165, as to nuisances. See also s. 23 of the Municipal Corporations Act, 1882, and s. 16 of the L. G. Act, 1888, as to the powers of town councils and county councils to make byelaws for good rule and government, etc. Cock crowing.

45. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust ashes and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act. Power to provide receptacles for deposit of rubbish.

It is from this section that an urban authority derive their power to provide a refuse destructor. Such an appliance can only be provided for dealing with refuse collected by the authority in pursuance of their statutory powers. Upon receiving an application from a *rural* authority for sanction to a loan for the provision of a destructor, the L. G. B. stated that the authority must first be invested with the powers of the section, and that if it was desired to treat the expenses as special expenses an order must be obtained under s. 229. The same view is taken with regard to the provision of refuse *tips* by rural authorities.

It will be observed that the section only authorises the provision of *permanent* buildings and places of deposit when the refuse is collected by the authority themselves; this restriction, however, is not contained in s. 39. The point is sometimes of importance to rural authorities who require urban powers under s. 276 for the provision of certain conveniences of the kind mentioned in s. 45, and do not themselves propose to collect refuse.

As to the acquisition of land for the purposes of this section, see s. 175, *post*, and as to the expense, see s. 207, *post*. The sale of land to a local authority for the purpose of tipping rubbish thereon by a vendor who retains adjoining land does not impliedly authorise the local authority to tip refuse in such a way as to cause a nuisance on the adjoining land where such tipping can be done without causing a nuisance. Whether in the event of its being impossible to use the land for tipping without causing a nuisance the local authority would be so authorised, *quære? Priest* v. *Manchester Corporation* (1915), 84 L. J. K. B. 1734; 13 L. G. R. 665.

Where the P. H. A., 1890, s. 20, is in force, the authority may make regulations and byelaws for sanitary conveniences provided by them.

As to an authority's liability to a person upon whose land, or in whose stream, their servants or contractors deposit refuse collected by them, see *Robinson* v. *Beaconsfield R. D. C.*, on p. 110, *ante*, and cases in note (*ii*), on p. 111, *ante*. As to damages for trespass by tipping rubbish, see *Whitwham* v. *Westminster Brymbo Coal and Coke Co.*, [1896] 2 Ch. 538. Using land as a rubbish shoot may amount to waste in a lessee (*West Ham Central Charity Board* v. *East London Waterworks Co.*, [1900] 1 Ch. 624).

46. Where, on the certificate of the medical officer of health or of any two medical practitioners (*a*), it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing cleansing or purifying of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing (*b*) to the owner or occupier (*c*) of such house or part thereof to whitewash cleanse or purify the same, as the case may require (*cc*). Houses to be purified on certificate of officer of health or of two medical practitioners.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to

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make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed cleansed or purified, and may recover in a summary manner the expenses (*d*) incurred by them in so doing from the person in default (*e*).

(*a*) They must be persons registered under 21 & 22 Vict. c. 90, and 49 & 50 Vict. c. 48. Certificates signed by unregistered persons are invalid. See 21 & 22 Vict. c. 90, s. 37, and 23 & 24 Vict. c. 7. A form of certificate will be found in the Encyclopædia of Forms and Precedents, Vol. X., at p. 596.

(*b*) See as to this notice, ss. 266, 267, *post*. See form of notice in Encyclopædia of Forms and Precedents, Vol. X., p. 596. The authority may select either the owner (defined in s. 4, *ante*, p. 8) or the occupier.

(*c*) See s. 306, *post*, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(*cc*) As to how far it is necessary to specify in the notice the precise evils complained of and the remedies desired, see *Gala-Water District Committee* v. *Buchan* (1920), J. 87.

(*d*) See as to the recovery of the penalty and expenses, s. 251, *post*. And see note (*e*) to s. 21, *ante*, p. 81.

(*e*) Further provisions are contained in the sections relating to nuisances, ss. 91—97, *post*. See also the provisions of the Factory Acts, 1901 and 1907. These Acts, which relate to factories, bakehouses and laundries, are set out in App. I., *post*, Vol. II. See also the provisions of the Infectious Disease (Prevention) Act, 1890, s. 5, *post*, and the Housing of the Working Classes Acts, 1890—1919, *post*, Vol. II. The latter Acts deal with houses in a condition dangerous to health, so as to be unfit for human habitation.

Penalty in respect of certain nuisances on premises.

47. Any person who in any urban district—

(1) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person (*a*); or

(2) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice (*b*) to him from the urban authority to remove the same; or

(3) Allows the contents of any water-closet privy or cesspool to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued (*c*), and the urban authority shall (*d*) abate or cause to be abated every such nuisance, and may recover in a summary manner (*e*) the expenses incurred by them in so doing from the occupier (*f*) of the premises on which the nuisance exists.

(*a*) See note (*g*), *ante*, p. 114. Keeping swine in a city is a nuisance at common law (*R.* v. *Wigg* (1705), Salk. 460). The sub-section is expressed very generally, and seems to give a public remedy for a private grievance. A byelaw under s. 44, *ante*, p. 113, may regulate the erection of pigstyes so far as injury to health is concerned; but if a nuisance be caused, compliance with the byelaw will not protect the offender from the consequences of this section. See as to swine in the metropolis, 54 & 55 Vict. c. 76, s. 17; *Chelsea (Vestry of)* v. *King* (1864), 34 L. J. M. C. 9; 29 J. P. 39.

The sub-section applies not merely to the keeping of swine in improper places, but to keeping in an improper manner (*Digby* v. *West Ham L. B.* (1858), 22 J. P. 304). It is not necessary to prove that the keeping of the swine is injurious to health (*Banbury Sanitary Authority* v. *Page* (1881), 8 Q. B. D. 97; 46 J. P. 184). It is clear swine are not to be kept in a dwelling-house at all. As to what amounts to "keeping" swine, see *Steers* v. *Manton*, *ante*, p. 115.

(*b*) See as to this notice, which, as it seems, should be given by the clerk of the authority, ss. 266, 267. A form of notice will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 597.

(*c*) See s. 251, as to the recovery of the penalty. It would seem that the continuance referred to, except under sub-s. (2), must be *after the conviction*, for there is no other date from which the time is to be calculated under sub-ss. (1) and (3). **Note to Section 47.**

(*d*) There is no distinct provision in the Act for compelling performance of this duty. Note (*e*) to s. 299, *post*, may be referred to.

(*e*) As to the recovery of these expenses, see note (*e*) to s. 21, *ante*, p. 81, and s. 251, *post*.

(*f*) Note here that the recovery is to be from the occupier; no recourse is given against the owner. It will be seen that this section applies to such matters as would generally form nuisances to which ss. 91 *et seq.*, *post*, pp. 165 *et seq.*, would apply. Then recourse may be had against the owner as well as the occupier. The above section does not require proof of any injury to health. See *Banbury Sanitary Authority* v. *Page*, *supra*.

Offensive Ditches and Collections of Matter.

Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.

48. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority (*a*), summon the local authority of such adjoining district to appear before a court of summary jurisdiction (*b*) to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such court to be necessary; and such court, after hearing the parties, or ex parte in case of the default of any of them to appear, may make such order (*c*) with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such court may seem reasonable.

(*a*) It is presumed that this application must be made by an officer of the local authority, who will be directed to make such application by their order, which should be entered on the minutes. It cannot be necessary that the application should be under seal. As to the appearance of the authority summoned, see s. 259, *post*.

(*b*) See the definition, *ante*, p. 36.

(*c*) This order will justify the entry on any lands when the entry may be necessary for the execution of the order. As to compensation, see s. 308, *post*. As to the time allowed for appealing from the order, see *R.* v. *Barnet R. S. A.* (1876), 1 Q. B. D. 558; 41 J. P. 6; and s. 31 of the S. J. A., 1879, set out in the notes under s. 269, *post*. The W. rural sanitary authority summoned the N. rural sanitary authority under this section, for not cleansing a ditch situated on the boundary of, but in, the N. district. The justices made an order on the W. authority to cleanse the ditch, the nuisance being caused by sewage from their district. The W. authority contended that they could not comply with the order without committing a trespass, but it was held that such a defence could not be set up under the section, and that the order was right (*Woburn Sanitary Authority* v. *Newport Pagnell Sanitary Authority* (1887), 51 J. P. 694).

Removal of filth upon certificate of inspector of nuisances.

49. Where in any urban district (*a*) it appears to the inspector of nuisances that any accumulation of manure dung soil or filth or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises

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whereon it exists, to remove the same (*b*); and if such notice is not complied with within twenty-four hours from the service thereof, the manure dung soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority (*c*), and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner (*d*) from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner (*e*).

(*a*) It will be observed that this section, which places great power in the hands of the inspector of nuisances, applies only to urban districts. It is not the practice of the M. of H. to put this provision in force in rural districts, unless the circumstances are shown to be very exceptional. The view of the department is that rural councils can deal with nuisances arising from accumulations of offensive or noxious matters under the nuisance clauses of the Act (ss. 91 *et seq.*); they may also make and enforce byelaws as to nuisances under s. 44, and may themselves undertake the collection of house refuse and the cleansing of receptacles under s. 42. Section 50 is also considered unsuitable to rural districts.

(*b*) For a form of notice, see Encyclopædia of Forms and Precedents, Vol. X., at p. 598. A company, in whom a harbour was vested, were held bound, under 18 & 19 Vict. c. 121, s. 12, to remove sea-weed, which, by the action of the sea, was drifted into the harbour, and being left there became a nuisance (*Margate Pier and Harbour Proprietors* v. *Margate Town Council* (1869), 33 J. P. 437; 20 L. T. 564). An accumulation of stable dung, which may be dealt with under this section, may also be within the provisions of ss. 91—94, *post*, pp. 165—176 (*Smith* v. *Waghorn* (1863), 27 J. P. 744).

(*c*) No express power is given to the officer to enter and remove the offensive matter; but it is implied, otherwise there would be no expenses in the execution of the section. A similar clause existed in 11 & 12 Vict. c. 63, s. 59, and in 18 & 19 Vict. c. 121, s. 18; but the latter Act took effect after an order of justices for the abatement of a nuisance. The present Act adopts the provisions in the latter Act for the disposal of the surplus, and not that of the earlier Act, so that the owner may sometimes be benefited by the action of the authority. As to the sale of the matters, see s. 101, *post*, p. 187. It must be noticed that a sale is not absolutely required, but that the matter may be otherwise disposed of, perhaps by deposit on land of the local authority, on payment of the value *minus* the cost of removal.

It is the duty at common law of the owner of vacant land to prevent his land from being a public nuisance, although such a nuisance may be caused by the acts of other persons; and the Attorney-General, on behalf of the public, is entitled to an injunction to prevent such owner from committing a breach of that duty. The fact that a sanitary authority under the Public Health (London) Act, 1891, have power, or a duty, to themselves abate a nuisance, or to take proceedings to procure its abatement, does not, having regard to ss. 13 and 138 of that Act, prevent them from obtaining, in an action brought by them as relators with the Attorney-General, an injunction to prevent the continuance of the nuisance (*Att.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560).

(*d*) See, as to the recovery of these expenses, note (*e*) to s. 21, *ante*, p. 81, and s. 251, *post*.

(*e*) See the definition in s. 4, *ante*, p. 8.

Periodical removal of manure from mews and

50. Notice may be given by any urban authority (*a*) (by public announcement (*b*) in the district or otherwise) for the periodical removal of manure or other refuse matter from mews stables or other premises;

and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings (*c*) for each day during which such manure or other refuse matter is permitted to accumulate. Section 50. other premises.

(*a*) See note (*a*) to preceding section.

(*b*) This word was used in 29 & 30 Vict. c. 90, s. 53, from which this clause is taken. It has no definite meaning. An advertisement in the district, and printed placards affixed to the walls of mews, stables, or other places, seem to satisfy the term. Compare s. 36 (2) of the Public Health (London) Act, 1891. For a form of notice, see Encyclopædia of Forms and Precedents, Vol. X., p. 599.

(*c*) As to the recovery of this penalty, see s. 251, *post*. The accumulation referred to must be after the notice.

WATER SUPPLY.

Powers of Local Authority in relation to Supply of Water.

51. Any urban authority may (*a*) provide their district (*aa*) or any part thereof, and any rural authority may (*a*) provide their district (*aa*) or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes (*b*), and for those purposes or any of them, may— General powers for supplying district with water.

(1) Construct and maintain waterworks (*c*), dig wells, and do any other necessary acts ; and

(2) Take on lease or hire any waterworks (*c*), and (with the sanction of the Local Government Board) purchase any waterworks (*c*), or any water or right to take or convey water, either within or without their district (*d*), and any rights powers and privileges of any water company (*e*) ; and

(3) Contract (*f*) with any person for a supply of water.

(*a*) These words are in themselves permissive and enabling, but if an authority do not avail themselves of this power where a public water supply is required, and they can procure it at a reasonable cost, they will be in default, and proceedings may be taken under s. 299, *post*. A rural authority cannot, at the expense of the rates, promote a private Bill to attain that end (*Cleverton* v. *St. German's R. S. A.* (1886), 56 L. J. Q. B. 83 ; 3 T. L. R. 43). They might probably promote a Bill, if they can find persons to provide the money (*Att.-Gen.* v. *West Riding of Yorkshire Rivers Board* (1905), 69 J. P. 177 ; 3 L. G. R. 764) ; and such Bill might contain a clause providing (in the event of it becoming an Act) for payment of all the expenses out of the rates (*cf.* Uttoxeter Act, 1892). As to the powers of a parish council in relation to water supply, see the L. G. A., 1894, s. 8 (1) (e), (i), (k) ; but s. 8 (3) specially provides that nothing in that section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works. Duty of local authority.

The Public Health (Water) Act, 1878 (set out at length, *post*), provides by s. 3 that it shall be the duty of every rural authority subject to certain conditions to see that every occupied dwelling-house within their district has, within a reasonable distance, an available supply of water sufficient for the consumption and use for domestic purposes of the inmates of the house. The same section provides that nothing in that Act is to be deemed to relieve the authority of their duty to provide

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a water supply under this Act. Section 11 of the Act of 1878 provides that the L. G. B., now the M. of H., may, if they think fit, by order invest any urban authority with all or any of the powers and duties which are by that Act given to a rural authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

(*aa*) *Semble*, an authority may carry out works for procuring a water supply in an adjoining district without obtaining any consent from the authority of such district. *Cf. Withington L. B.* v. *Manchester Corporation*, [1893] 2 Ch. 19; 57 J. P. 340.

"Limits of supply" in case of companies.

A company, authorised to supply water within a certain area, extended its main to the boundary of such area, and from thence continued it at a consumer's expense to a spot outside the area, where they erected a hydrant and meter from which pipes were laid to the consumer's house: it was held that the company were supplying water outside their area, and must be restrained (*Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453). See also *Att.-Gen.* v. *Frimley, etc. Water Co.*, [1908] 1 Ch. 727; 72 J. P. 204; *Marriott* v. *East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70; 72 J. P. 509, and *Att.-Gen.* v. *South Staffordshire Water Co.* (1909), 25 T. L. R. 408, as to water companies exceeding their statutory powers by sinking wells on additional land acquired only for "ancillary" purposes. See *Birr R. D. C.* v. *Birr U. D. C.*, [1915] 1 I. R. 413, which was an action to restrain the defendants from supplying water in plaintiffs' district and which failed only on the ground of acquiescence.

The Defence of the Realm (Acquisition of Land) Act, 1916, s. 7, empowered supplies to be given during the recent war outside a water authority's area on the requisition of or at the request of a Government Department and subject to certain conditions and restrictions.

Purposes of supply.

(*b*) 11 & 12 Vict. c. 63, s. 75, limited the power to private purposes. This section extends it to public purposes also, but this general language must be qualified by the nature and extent of the district. See also *West Surrey Water Co.* v. *Guardians of Chertsey Union*, cited in the notes to s. 52, *post*, p. 126. As to the supply of water for trade purposes, see s. 65, *post*, p. 142.

Purchase of waterworks.

(*c*) See the definition of *waterworks* in s. 4, *ante*, p. 34. The sanction of the L. G. B. (now the M. of H.) is here introduced, and operates to protect both the owners of water rights and the interests of the ratepayers. Section 63, *post*, p. 139, provides for leases and sales of waterworks to an authority.

Practice as to loans.

Upon receiving an application for their sanction under the section (usually combined with a proposal to borrow money) the M. of H. require the district council to furnish a copy of the resolution directing it, a copy of the resolution passed by the members of the water company under s. 63, and a copy of a provisional agreement for the purchase of the undertaking. Financial particulars of the district are also required as well as the following information with respect to the waterworks: (1) A full description, accompanied by a plan or plans of the works; (2) particulars as to the nature, age and condition of each portion of the works; (3) whether the water has to be raised by mechanical means or is supplied wholly by gravitation, and, if the former, the height to which it has to be raised and the nature and power of the pumping machinery; (4) a description of the source or sources of water, including information as to the volume obtainable from it (or from each as the case may be) in the driest seasons; and (5) the quality of the water as shown by analysis, or, if it is derived from more than one source, by a separate analysis of the water from each source. The Ministry require further to be informed of the nature of the water rights of the company; the number of persons supplied with water; and whether the company supply water beyond the district; and to be furnished with a statement showing the annual income of the company and the annual working cost of the undertaking, including establishment charges and interest on capital. A local inquiry is usually directed.

The L. G. B. stated that it was not clear to them that an urban district council could, under the P. H. Acts, acquire rights to supply water beyond the limits of their district, or acquire an undertaking to which was attached an obligation to furnish such a supply. The difficulty could be removed either by the urban council entering into an agreement with the neighbouring council to purchase the undertaking jointly,

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or by an arrangement under which each council would separately purchase so much of the rights, property, etc. of the company as might suffice for the supply of their district, the purchase being preceded by an arrangement under which one of the councils would subsequently supply the other under s. 61, *post*, p. 135.

By an agreement (sanctioned by statute) two water companies agreed that company A. should take over the works, provide for a mortgage debt, and pay interest on the shares of company B. The deed carrying out this transaction provided that if company A. (or their intended assignees, the corporation or local board), being desirous of becoming the absolute and unrestricted owners of the works of company B., subject only to the mortgage debt, should " on or before any December 25th, after having given to company B. six months' previous notice of their desire to avail themselves of the option thereby given, pay unto company B. £46,246, the amount of their share capital, the party so paying should become absolutely entitled to the works." In June, 1870, the corporation, who had acquired the interest of company A., gave notice to company B. of their intention to pay the £46,246, on December 25th following, but were unable, from want of funds, to carry out the purchase. In June, 1871, they again gave notice that they would pay the money on December 25th, 1871:—*Held*, that the corporation by giving the first notice and failing to act upon it, had not lost the right given to them by the deed of purchasing after six months' notice on or before any December 25th (*Ward* v. *Wolverhampton Waterworks Co.* (1871), L. R. 13 Eq. 243). A water board was constituted by special Act with the right of supplying water within the boundaries of two boroughs and certain outlying districts, provided that when so required by the sanitary authority of any such outlying district the board should sell to such sanitary authority the mains, pipes, and fittings belonging to the board within that district at a price to be fixed, in default of agreement, by an arbitrator, and that after such sale the board should cease to supply water within such district. In an arbitration under this proviso, between the board and an outlying district, it was held that in fixing the price the basis of calculation should be merely the value of the mains, pipes, and fittings regarded as plant *in situ*, capable of earning a profit, and that the arbitrator must not include in the price compensation to the board for the loss of the right to supply water in the outlying district after the sale (*Stockton and Middlesbrough Water Board* v. *Kirkleatham L. B.*, [1893] A. C. 444; 57 J. P. 772). See observations on this case in *London C. C.* v. *London Street Tramways Co.*, [1894] 2 Q. B. 189; affirmed *sub nom. London Street Tramways Co.* v. *London C. C.*, [1894] A. C. 489; and see also for decisions as to " purchase clauses " in the case of gasworks, p. 368, *post*, *Wolstanton United U. D. C, and Burslem Corporation, In re* (1907), 72 J. P. 28; 6 L. G. R. 523; *Hamilton Gas Co.* v. *Hamilton Corporation*, [1910] A. C. 300; 74 J. P. 185; *Perth Gas Co.* v. *Perth Corporation*, [1911] A. C. 506; and in the case of tramways cases noted under the Tramways Act, 1870, s. 43, in App. I., *post*, Vol. II.

Construction of new waterworks.

When a scheme of water supply proposed by a district council involves the sinking of a well to obtain the required supply, the M. of H. require the council to proceed by steps, and are only willing at first to sanction a loan for the amount necessary for the boring and preliminary expenses. This loan is usually repayable within five years, but the Ministry express willingness, in the event of a good supply of water being found, to sanction the reborrowing, for an extended period, of so much of the loan as is properly outstanding. Any provisional agreement entered into with the owner of the land should be so framed as to secure to the district council the possession of the land in the event of the boring proving satisfactory. In the case of all lands required for the scheme the freehold should be obtained, if possible; otherwise the period allowed for the repayment of the loan may be curtailed. Upon the completion of a borehole the Ministry require the yield of water to be ascertained by continuous pumping night and day without cessation for a period of at least fourteen days, and particulars of the results to be supplied to them in a particular form.

Where a rural district council determine to adopt plans for the water supply of a contributory place, they are required to give notice to the parish council before entering into a contract. See the L. G. A., 1894, s. 16 (3), *post*.

The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877, in App. I., *post*, Vol. II., provides that the construction or erection of reservoirs or other

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works of a permanent character for the supply of water to any sanitary or other local authority or water company, shall be deemed to be an improvement of land within the meaning of 27 & 28 Vict. c. 114, s. 9, and shall be sanctioned by the commissioners if it can be shown to their satisfaction that such reservoirs or works will effect a permanent yearly increase in the value of settled lands, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of such works is to be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid (s. 5). Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under the Act, may enter into any agreement for the supply of water to any sanitary or other local authority, for any term not exceeding the number of years during which the cost of the improvement or any part of it is made a charge upon the estate: Provided that every such agreement be approved of by the commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner (s. 6). The commissioners referred to were the Inclosure Commissioners, afterwards the Land Commissioners under the Settled Land Act, 1882, s. 48, the Board of Agriculture and Fisheries under 52 & 53 Vict. c. 30, s. 2, and 3 Edw. 7, c. 31, s. 1, and now the Minister of Agriculture and Fisheries under 9 & 10 Geo. 5, c. 91. See also 60 & 61 Vict. c. 44, and 62 & 63 Vict. c. 46.

Rating of waterworks.

As to the rating of waterworks provided by a local authority, see *R.* v. *West Middlesex Waterworks Co.* (1859), 28 L. J. M. C. 135; 1 El. & El. 716; *Chelsea Waterworks Co.* v. *Overseers of Putney* (1860), 8 W. R. 607; *Worcester Corporation* v. *Droitwich Assessment Committee* (1876), 2 Ex. D. 49; 41 J. P. 355; *Peterborough Corporation* v. *Stamford Union* (1883), 31 W. R. 949; *R.* v. *South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359; 50 J. P 20; *Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Union* (1886), 17 Q. B. D. 384; *R.* v. *Birstall L. B.* (1885), 1 T. L. R. 541; *Merthyr Tydfil L. B.* v. *Merthyr Tydfil Union*, [1891] 1 Q. B. 186; 55 J. P. 294; *Liverpool Corporation* v. *Llanfyllin Union Assessment Committee*, [1899] 2 Q. B. 14: 63 J. P. 452; *Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, [1900] A. C. 3; 64 J. P. 260; *New River Co.* v. *Hertford Union*, [1902] 2 K. B. 597; 66 J. P. 724; *Liverpool Corporation* v. *Birkenhead Union* (1905), 70 J. P. 146; 94 L. T. 509; *Metropolitan Water Board* v. *City of London Assessment Committee* (1909), 73 J. P. 142; 25 T. L. R. 246; *Metropolitan Water Board* v. *Assessment Committee of the Chertsey Union*, [1916] 1 A. C. 337; 80 J. P. 137. And as to the rateability of a "catchment area," see *Liverpool Corporation* v. *Chorley Union*, [1913] A. C. 197; 77 J. P. 185.

Income tax on waterworks.

An authority who make a profit on their waterworks are liable to pay income tax thereon: *cf. Mullingar R. D. C.* v. *Rowles*, [1913] 2 I. R. 44, and other cases in notes to s. 211, *post*. A rural authority purchased water in bulk and supplied it to several parishes, making in some cases a profit and in others a loss. It was held that for the purposes of income tax assessment each supply must be treated as a separate undertaking, and that losses could not be set off against profits (*Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328; 76 J. P. 437).

Rights of riparian owners.

(*d*) It will be seen that s. 332, *post*, prevents the water rights of proprietors from being injuriously affected without their consent; and although s. 176 enables the provisions of the Lands Clauses Act to be put in force, the accepted opinion seems to be that water rights cannot be purchased compulsorily. See note (*b*) to s. 176, *post*, and note (*a*) to s. 327, *post*, the evidence of Sir S. B. Provis before the Royal Commission on Market Rights and Tolls, Vol. II., Question 50, and the admission in argument in *Roberts* v. *Gwyrfai R. D. C.*, *infra*; but see s. 14 of the Housing, Town Planning, etc. Act, 1919, under which power is given to acquire water rights in connection with housing schemes.

In *Bush* v. *Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459; 39 J. P. 660, it was held that the abstraction by a waterworks company of water from a stream did not entitle a riparian owner below to require the company to purchase his interest in the stream, but only entitled him to compensation as for land injuriously affected. But when a company had power to divert the whole of a stream, and gave notice of their intention to do so, it was held that they were bound to purchase the entire

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interest of the riparian owners below (*Stone* v. *Yeovil Corporation* (1876), 2 C. P. D. 99; 42 J. P. 212, following *Ferrand* v. *Corporation of Bradford* (1856), 21 Beav. 412). It is to be observed that a riparian owner has merely a right to the use of the water as it passes through his property. He cannot divert it into a reservoir for the purpose of disposing of it to the inhabitants of a town (*Swindon Waterworks Co.* v. *Wiltshire and Berkshire Canal Navigation Co.* (1875), L. R. 7 H. L. 697; 40 J. P. 804; followed in *McCartney* v. *Londonderry and Lough Swilley Rail Co., Ltd.*, [1904] A. C. 301). And a local authority possessing land on the bank of a stream have no greater right (*Owen* v. *Davis*, W. N. (1874) 175). An authority have no power, for the purpose of supplying water to their district, to alter the flow of water in a stream without the consent in writing of the lower riparian owners, as required by s. 322, *post*, for by so doing they are "injuriously affecting" the common law rights of such owners, and will be restrained from so doing without any proof of sensible damage (*Roberts* v. *Gwyrfai R. D. C.*, [1899] 2 Ch. 608; 64 J. P. 52). A riparian owner cannot, except as against himself, confer on another person any right to use the water, and such user is wrongful if it affects the rights of other owners (*Ormerod* v. *Todmorden Mill Co.* (1883), 11 Q. B. D. 155; 47 J. P. 532; following *Stockport Waterworks Co.* v. *Potter* (1864), 3 H. & C. 300; 31 L. J. Ex. 9). Where however, the person using it returned it to the stream unaffected in quantity or quality, an injunction was refused (*Kensit* v. *G. E. Rail. Co.* (1884), 27 Ch. D. 122). An action by a local authority against a railway company to determine rights with regard to the abstraction of water from a river was postponed until the expiration of the war in *Cardiff Corporation* v. *Barry Rail. Co.* (1916), 85 L. J. Ch. 316; 80 J. P. 261.

As to rights in artificial watercourses, see *Sutcliffe* v. *Booth* (1863), 32 L. J. Q. B. 136; 27 J. P. 613; *Burrows* v. *Lang*, [1901] 2 Ch. 502; *Baily* v. *Clark*, [1902] 1 Ch. 649; *Lewis* v. *Meredith*, [1913] 1 Ch. 571, and cases therein cited, and *cf. Remfry* v. *Natal* (*Surveyor-General*), [1896] A. C. 558.

A canal company under a special Act acquired an undertaking for maintaining the navigation of the rivers D. and C. The water of the rivers was not expressly vested in them. The defendants owned land adjoining the C., and for more than twenty years had abstracted large quantities of water for railway purposes. In an action to restrain them from abstracting water in breach of the public rights in the navigation, the defendants disputed the canal company's ownership of the water; alternatively they set up a prescriptive right; but they disclaimed any right to interfere with the canal company's statutory powers and duties. It was held that, having regard to such disclaimer, the canal company having no property in the water had no title to sue; and that no question of prescription arose. But, had it done so, *quære* whether NEVILLE, J., was right in holding that the prescriptive claim was vitiated by the fact that the defendants had taken water for many years without saying that they were taking only surplus water, and therefore might have been taking water which was not superfluous (*Att.-Gen. and Sheffield, etc. Navigation Co.* v. *G. N. Rail. Co.*, [1909] 1 Ch. 775; 73 J. P. 41).

Cases as to "compensation water."

Where a waterworks company were empowered by local Acts to take and use certain water on condition of their making a compensation reservoir for storing the water during floods for the benefit of millowners lower down, it was held that they were bound to return the water from such reservoir without fouling it (*Clowes* v. *Staffordshire Potteries Co.* (1872), L. R. 8 Ch. 125; 36 J. P. 760).

A local authority, predecessors in title of the defendants, were empowered by special Act to construct a reservoir, and for that purpose to divert a stream which fed a watercourse that flowed for some distance across the plaintiff's lands and supplied a company (his lessees) with water for the purposes of their works. The Act provided that the authority should permit "the owners, lessees and occupiers" of the works to take compensation water along the watercourse not exceeding a specified quantity "during any working day," and imposed liability in damages if the authority failed to permit the due quantity of compensation water to flow into the watercourse. In 1890 the company ceased to use their works and subsequently dismantled them and surrendered their lease. Meanwhile the watercourse gradually fell into disuse and disrepair, so that the water escaped and did not reach the site of the works; and in 1909 the defendants diverted the stream and prevented water from flowing into the watercourse. In an action by the plaintiff claiming a declaration of his right to the compensation water under the Act and an injunction to restrain

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Cases as to "compensation water—*cont.*

the defendants from diverting or interfering with the flow of water to the watercourse, it was held, that on the true construction of the Act the grant of compensation water was to the plaintiff and others as "the owners lessees and occupiers" of the works, and was not limited as to the purposes for which the water was to be used; that "any working days" meant the days of the week other than Sundays and holidays; that the non-user of the compensation water whilst it was not wanted was not of itself evidence of any abandonment by the plaintiff of his rights, and that he was entitled to the uninterrupted flow of the specified quantity of compensation water to the site of the works; but that, as no present damage had resulted from the diversion of the water, an injunction would not be granted (*Hanbury* v. *Llanfrechfa Upper U. D. C.* (1911), 75 J. P. 307; 9 L. G. R. 360).

A corporation were empowered by a local Act to construct and maintain certain waterworks and to appropriate certain streams and waters. The Act provided that as compensation for the taking of the water the corporation should cause to flow from a reservoir a specified quantity of water, and further provided that in case of neglect by or in consequence of which the compensation water should not so flow, "the corporation should for every day on which such neglect occurred forfeit and pay to the occupiers of each of the mills and works affected thereby (who might sue for and recover the same) the sum of five pounds, and should, in addition, make compensation for any loss, damage or injury sustained by such occupiers, or any of them, in respect of which such penalties were an insufficient compensation, and such occupiers might respectively from time to time recover such compensation . . . in any court of competent jurisdiction." Eight mill occupiers, alleging that by reason of neglect the specified quantity of water did not flow for a period of forty-three days, each claimed £215. It was proved that there was sufficient water in the reservoir to enable the corporation to send down the statutory quantity, and that the pipes, if not defective, were sufficient to carry down the water; that such pipes require care and attention from time to time, but that they had not been inspected for thirty years. It was held that the evidence established a primâ facie case of neglect, and cast upon the corporation the burden of proving that they had used reasonable care. It was also held that, in case of neglect, the corporation were liable to pay £5 per day to each of the occupiers of the mills, and that therefore each of the plaintiffs was entitled to recover the amount claimed (*Beaumont and Others* v. *Huddersfield Corporation* (1902), 67 J. P. 57; 19 T. L. R. 97). In a later case arising under the same local Act (which incorporated the provisions of the Waterworks Clauses Act, 1847) it was held that the provision for the payment of penalties was not punitive, but compensatory, and that the occupiers of mills could maintain an action in the High Court for the recovery of the penalties (*Meltham Spinning Co., Ltd.* v. *Huddersfield Corporation* (1903), 67 J. P. 445; 89 L. T. 403). See also a more recent case where the court held that the penalties were punitive and not compensatory, and that the justices might therefore reduce same under the S. J. A., 1879 (*Davies-Cooke* v. *Hawarden and District Waterworks Co.* (1907), 71 J. P. 223; 96 L. T. 906).

As to the effect of a covenant to keep "works" in repair in consideration of the grant of an easement to take water, see *Evan-Thomas* v. *Neath Corporation* (1912), 76 J. P. 397.

The Commissioners of Woods may with the consent of the Treasury release to or waive in favour of, any local authority any water rights exercisable by, or reserved to, the Crown (Crown Lands Act, 1894, s. 8).

As to abstraction from underground streams, see the notes to s. 17, *ante*, p. 73.

(*e*) See the definition in s. 4, *ante*, p. 34.

Contracts "for supply."

(*f*) A landowner supplying water to her own tenants, agreed with the rural authority to supply two villages upon the same terms upon which she supplied her tenants. In consequence, however, of a report by their medical officer, the authority entered into further negotiations with the landowner and with a neighbouring corporation in reference to the supply. The landowner then gave three months' notice to the consumers of water in the two villages (other than her tenants) that she would at the expiration of that time cease to supply them. The authority applied for an injunction against her, and proved that water could not be procured from wells in the district, and that a wholesome supply could only be otherwise procured from a long distance. NORTH, J., granted the injunction on the ground

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that the notice given was not reasonable under the circumstances (*Hunslet Union (Guardians of)* v. *Ingram* (1893), Times, March 27th). See also *Earl Harrowby* v. *Leicester Corporation* (1915), 80 J. P. 92; 14 L. G. R. 42. In that case there was a continuing contract to supply and take water determinable by notice in the event of the water becoming impure or unfit in the opinion of the L. G. B. The L. G. B. refused to determine the question. It was held that a decision by either the agreed arbitrator or some other properly qualified tribunal was a condition precedent to giving a valid notice.

As to what constitutes conduct by a distributing authority possessing a monopoly to supply water within a district such as to amount to acquiescence or consent to supply within that district by a neighbouring authority, see *Birr R. D. C.* v. *Birr U. D. C.*, [1915] 1 I. R. 413.

The L. G. B. expressed the opinion that a district council may, if they see fit, give a water company within whose area of supply their district is situate, a guarantee such as will ensure the receipt by the company of the minimum revenue recognised in s. 35 of the Waterworks Clauses Act, 1847, and they may enter into contracts for the supply of water in pursuance of which specified payments may be made to the company.

If a loan is required for the construction of works dependent upon the supply of water under a contract with a company or authority it is essential that the supply should be guaranteed for a number of years. The term ordinarily allowed by the M. of H. for the repayment of loans for waterworks purposes, other than machinery, is thirty years.

Restriction on construction of waterworks by local authority.

52. Before commencing to construct waterworks (*a*) within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament (*b*) to supply water, the local authority shall give written notice to every water company (*c*) within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks (*a*) within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing (*d*) to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable (*e*), or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act (*f*).

What works come within the section.

(*a*) See note (*c*) to last section. The word "waterworks" here means new waterworks, and does not apply to additions to or improvements of substantial waterworks previously existing, as, for instance, the construction of an additional reservoir (*Cleveland Water Co.* v. *Redcar L. B.*, [1895] 1 Ch. 168; 59 J. P. 7). This decision was approved, but held inapplicable, in *Huddersfield Corporation* v. *Ravensthorpe U. D. C.*, [1897] 2 Ch. 121; 61 J. P. 596. In that case an authority with an existing waterworks system, having had an area added to their district by order of the county council, proceeded to lay pipes for the supply of such area. It was held that this was a constructing of waterworks within the meaning of the section, so that notice should have been given to the plaintiffs whose limits of supply included the added area, and that the plaintiffs were entitled to an injunction. In the order of the county council, no express provision was made as to the supply of water in the added area. This might possibly have been made. See *Brighton Intercepting and Outfall Sewers Board* v. *Hove Corporation* (1904), 68 J. P. 565; 20 T. L. R. 760). The section does not apply to the construction of works by an authority for the

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supply of water for their own use, as for flushing sewers (*West Surrey Water Co.* v. *Guardians of Chertsey Union*, [1894] 3 Ch. 513; 58 J. P. 167).

"Water company."

(*b*) In the P. H. A., 1848, s. 75, the word *established* only was used, and though the law officers of the Crown had advised that this meant established by Act of Parliament, that opinion had not been judicially confirmed. The text, however, confirms that view for the future. It is presumed that the Act of Parliament referred to is a special Act, and that the Order is a Provisional Order under the Gas and Waterworks Facilities Acts respectively applying to the particular company.

The undertaking of a water company was transferred by statute to a borough. The profits of the waterworks were under a later Act to be transferred to the borough improvement fund, or, at the option of the corporation, applied in reducing the price of water. It was held that the corporation were supplying water for their own profit, and were a "water company" within the meaning of this section (*Wolverhampton Corporation* v. *Bilston* (*Commissioners of*), [1891] 1 Ch. 315). This point was not argued, however, in the Court of Appeal (7 T. L. R. 374). It would appear that the Metropolitan Water Board are not a company trading for profit. See *M. W. B.* v. *Barton*, [1921] 1 Ch. 299; 90 L. J. Ch. 57.

Notice, when necessary.

(*c*) See s. 266 as to this notice. If notice be not given, the authority will be liable to an injunction.

The water company must be such a company as is previously mentioned in the section, for only such a company can be said to have limits of supply.

In many cases companies have been established for the supply of water, but have not acted on their powers, or have failed to carry their powers into effect. Nevertheless, it seems that notice should be given to them. Modern Acts and Orders, however, empowering companies to supply water within specified limits, provide that if within a limited period the company have not provided, or are not prepared on demand to provide a water supply the authority shall be freed from the restrictions imposed by s. 52.

"Able and willing" to supply water.

(*d*) A company is not *able and willing* within the meaning of this section, unless it has both the necessary powers and the necessary supply of water. The R. company had the necessary powers, but no water, and the S. company had the necessary water, but no powers within the district. The R. company sold its plant to the S. company, and certain members of company S. bought all the shares of company R. with the intention of allowing company S. to exercise the powers of company R. It was held that the powers could not be so delegated, and that neither company was *able and willing* within the meaning of the Act (*Richmond Waterworks Co.* v. *Vestry of Richmond* (1876), 3 Ch. D. 82). In *Newhaven and Seaford Water Co.* v. *Newhaven L. B.* (L. T. Journ. (1882), p. 226), HALL, V.-C., held that a company were "able and willing," within the meaning of this section, though their works were only in progress, and they had no completed works available for the supply of water. It seems doubtful whether the ability and willingness of the company is a question which the arbitrators under the section have jurisdiction to decide (*Bognor Water Co.* v. *Bognor L. B.* (1894), 70 L. T. 402, and see *Re Yeadon L. B. and Yeadon Waterworks Co.* (1889), 41 Ch. D. 52; reversing 59 L. T. 844).

Arbitration;

(*e*) The arbitrator must determine what are reasonable purposes. The term is in itself somewhat vague.

(*f*) See s. 179, *post*. The plaintiffs' special Act rendered it unlawful for the defendant board to construct waterworks within the plaintiffs' limits of supply during four years after the passing of the Act, so long as the plaintiffs were able and willing to supply water proper and sufficient. The plaintiffs made some unsuccessful attempts to find water, and before they succeeded, the defendants served them with notice of their intention to construct waterworks under the P. H. A., 1875, unless they were informed within one month that the plaintiffs were able and willing to supply the water. The matter went to arbitration, but the company, finding that the board were still forwarding a scheme of water supply, moved for an injunction to restrain them from commencing or threatening to construct works, and from proceeding to arbitration. The motion stood over to await the award, which was given in favour of the plaintiffs:—*Held*, that the defendants must pay the costs of the action, setting off any costs incurred by them by reason of the plaintiffs seeking to restrain the arbitration (*Bognor Water Co.* v. *Bognor L. B.*, *supra*).

Section 53.

As to construction of reservoirs.

53. At least two months (*a*) before commencing to construct under the provisions of this Act (*b*) any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons (*c*)) the local authority shall give notice (*d*) of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed (*e*).

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority (*f*) at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as hereinafter mentioned, unless such objection is withdrawn (*g*).

The Local Government Board may, on application (*h*) of the local authority, appoint an inspector to make inquiry (*i*) on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing with such modifications (if any) as they may deem necessary the intended work (*k*).

(*a*) *I.e.*, calendar months; see 52 & 53 Vict. c. 63, s. 3. The section does not prevent the authority purchasing land for the purpose. As, however, the land would be useless if an objection were sustained to the erection of a reservoir thereon, such a course is inadvisable, and the M. of H. would probably not sanction a loan for the purchase until the section had been satisfied.

(*b*) Presumably these words are to be construed so as to apply to powers acquired before the Act was passed (see s. 326, *post*), but the point is far from clear.

(*c*) See the Waterworks Clauses Act, 1863, in App. I., *post*, Vol. II., for provisions as to the protection of reservoirs. See also s. 68, *post*, p. 146. An enlargement of an existing service reservoir whereby it will hold a total volume of more than 100,000 gallons may be regarded as the construction of a new reservoir for the purposes of the section, and notices should be given.

(*d*) See as to this notice, ss. 266, 267, *post*. If this notice be not given, proceedings may be stayed by injunction, and the expenditure would be unlawful. If the land had not been already obtained, probably it could not be legally acquired.

(*e*) Generally the newspaper circulating in the district of the local authority will suffice, but if the reservoir is to be out of the district, it may be necessary to advertise in a different newspaper.

(*f*) Section 267 provides for the service of notices, but appears to apply rather to notices *by* the local authority than to notices *to* them. The person affected must, as it seems, be so affected in his land or some interest therein.

(*g*) Although there be no notice of objection, if the local authority require a loan, they must obtain the sanction of the M. of H. and furnish due proofs of compliance with the section. This sanction will not be given without due inquiry. See s. 233, *post*, and the notes thereon.

(*h*) This application (which should be deferred until the two months have expired) should be made in writing, signed by the clerk, and the following particulars must be furnished: A copy of a resolution of the authority directing the application, a copy of the newspaper containing the advertisement of the notice, and copies of the notices of objection served on the council.

(*i*) As to inquiries by the M. of H., see s. 293, *post*.

(*k*) It does not appear that this order can deal with the interests of persons affected by the works, but their interests may be such as to cause the Department to disallow the proposal.

Section 54.

Powers of carrying mains.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district (*a*) as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force (*b*).

As to the distinction between "mains" and "service pipes," see *Whittington Gas Light and Coke Co.* v. *Chesterfield Gas and Water Board*, [1914] 2 Ch. 146; 78 J. P. 379.

(*a*) These words enable the water to be brought from any distance to the district.

(*b*) See s. 16, *ante*, p. 55, as to sewers within the district, and ss. 32 *et seq.*, *ante*, p. 94, as to sewers without the district. See also *Jones* v. *Conway and Colwyn Bay Joint Water Supply Board*, *ante*, p. 60, as to water mains without the district; and see as to the powers conferred by this section, *East Molesey L. B.* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 289; *Hill* v. *Wallasey L. B.*, cited in the notes to s. 57, *post*, p. 132, and *Metropolitan Water Board* v. *L. B. & S. C. Ry. Co.*, [1915] 2 K. B. 297; 79 J. P. 337, cited in the notes to s. 16, *ante*, p. 59.

As to supply of water

55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water (*a*); and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district or part of the district supplied (*b*).

"Pure and wholesome" supply obligatory.

(*a*) This is compulsory upon the authority, and as to their default herein, see s. 299, *post*. Compare also the provisions of the Waterworks Clauses Act, 1847, s. 35. As to the purposes for which the authority are bound to supply water, see the Waterworks Clauses Act, 1847, s. 53, and the Waterworks Clauses Act, 1863, ss. 12, 13. These sections are set out in App. I., *post*, Vol. II.

The defendants were empowered by special Act incorporating (with the exception of certain provisions) the Waterworks Clauses Act, 1847, to supply water for domestic use within the limits and from the sources described by the Act. By the Act the defendants were entitled to prescribe the material to be used for service pipes by persons supplied with water, and by byelaws they prescribed that the material might either be lead or cast-iron. Service pipes of lead were, upon the application and at the expense of the plaintiff and his landlord, laid down by the defendants from their mains to the plaintiff's house. The service pipes when laid belonged to the consumer of the water supplied through them. By the Waterworks Clauses Act, 1847, s. 35, "the undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act, who . . . shall be entitled to demand a supply, and shall be willing to pay water rate for the same." Water which was pure and wholesome in the mains of the defendants, was supplied by them to the plaintiff, but in its passage through the service pipes it was contaminated by the lead, and he contracted lead poisoning. In an action against the defendants for injuries sustained from impure and unwholesome water:—*Held*, that he had no cause of action (*Milnes* v. *Huddersfield Corporation* (1886), 11 App. Cas. 511; 50 J. P. 676).

As to the mode of enforcing the duty of a water company to supply pure water, see *Att.-Gen.* v. *North Shields Waterworks Co.*, Times, May 12th, 1892; *Att.-Gen.* v. *Rhymney and Aber Valleys Gas and Water Co.* (1907), 71 J. P. 435: *Att.-Gen.* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388; 72 J. P. 48).

"Constant high-pressure" discretionary.

(*b*) It is, however, in the discretion of the authority whether they will act upon this provision, and they will be guided by the state of the district, and the facilities for obtaining water, so as to be able to raise it to the requisite height. It is to be

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observed that the Waterworks Clauses Act, 1847, ss. 35 and 42, as to high pressure are not incorporated in this Act. The authority are not, therefore, under any obligation to supply water at high pressure by reason of those sections. See *Purnell* v. *Wolverhampton New Waterworks Co.* (1861), 10 C. B. (N.S.) 576. In *Finchley L. B.* v. *Barnet District Gas and Water Co.*, Times, February 9th, 1893, a question arose as to the liability of a water company to keep water constantly laid on. The special Acts of the company incorporated the Waterworks Clauses Acts, 1847 and 1863, so far as applicable, and provided that the water need not be constantly laid on under pressure, except that on the application of a local authority the company might be required to provide a constant supply within so much of their district as could be supplied from their reservoir, but not higher than 300 feet above the ordnance *datum* level. It was contended that this provision did not relieve the company from the liability imposed by ss. 35, 37, 42 of the Act of 1847 of supplying water at high pressure for domestic purposes and for use at fires. But it was held that the case of *Purnell* v. *Wolverhampton New Waterworks Co.*, *supra*, was a direct authority to show that words such as those used in the special Act exempted a company from keeping a supply under pressure for fire purposes; that the principle underlying such decision showed that the exemption extended also to the keeping of a constant supply; and that under the local Acts, if the plaintiff board desired to have water for fire always laid on, they could secure it by entering into the necessary agreements and making the prescribed payments. See also *Liverpool Corporation* v. *Brady* (1897), 14 T. L. R. 11.

It has been held that the statutory requirements as to the supply of water at pressure contained in the Waterworks Clauses Act, 1847, s. 35, do not apply to the supply of water in bulk, and that the duty of a waterworks company ended with the supply of water at a given point (*Wombwell U. D. C.* v. *Dearne Valley Waterworks Co.* (1907), 71 J. P. 415; 5 L. G. R. 1132). In *Morpeth Corporation* v. *Tynemouth Corporation* (1916), 80 J. P. 75; 14 L. G. R. 182, however, this case was distinguished.

In that case the question arose upon the construction of an agreement as to whether the connection should be at pressure by a direct connection to a gravitation main as was contended by the plaintiffs, or by supply through the plaintiffs' service reservoir as was contended by the defendants. It was held on the construction of the agreement that the plaintiffs were entitled to supply in bulk through a direct connection with the defendant's gravitation main.

In *Kyffin* v. *East London Water Co.*, [1896] 1 Q. B. 446; 60 J. P. 230, it was held that upon a true construction of the Metropolis Water Act, 1871, it was for the metropolitan authority of the district, and not for an individual householder, to proceed for penalties under the Act. A householder aggrieved by an insufficient water supply could only recover penalties under s. 43 of the Waterworks Clauses Act, 1847.

Power to charge water rates and rents.

56. Where a local authority supply water to any premises they may (*a*) charge in respect of such supply a water rate (*b*) to be assessed on the net annual value (*c*) of the premises ascertained in the manner by this Act prescribed with respect to general district rates (*d*); moreover they may enter into agreements (*e*) for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates (*f*).

Power of ratepayers to require water rates or water rents to be charged.

(*a*) But by the Public Health (Water) Act, 1878, s. 10, *post*, "where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water

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supplied by them in such urban district or in such contributory place." But consumers cannot dictate to the authority whether the charge shall take the form of a rent or a rate. See a county court case in Local Government Chronicle, 1912, p. 766, where a consumer who considered that rates ought to be charged instead of rents, refused to sign any agreement, but was held liable to pay for water used by him as upon an implied agreement to pay a reasonable price for it. As to the power of an authority to charge rates or rents in respect of water supplied from standpipes, see ss. 9, 11 of the same Act, *post*.

How far rates need be equal or uniform.

(*b*) The N. Corporation purchased the undertaking of the N. Waterworks Co. under a local Act which empowered them to charge for the supply of water for domestic use to any dwelling-house a sum not exceeding 7½ per cent. per annum on the net rateable value of such dwelling-house. The company's special Act provided that "the company may from time to time supply any person with water for any purpose for which such supply may be required, for such remuneration, and upon such terms and conditions, as shall be agreed upon between the company and the person desirous of having such supply of water, under a special agreement," and this power was transferred to the corporation. There was no express provision in either Act requiring equality of rating in respect of the supply of water. The corporation charged for the supply for domestic purposes at the rate of 7½ per cent. upon the net rateable value of the dwelling-houses in one part of their district, and at the rate of 5 per cent. in another part. It was held that they were not bound to charge at an equal rate in the pound to all consumers (*Northampton Corporation* v. *Ellen*, [1904] 1 K. B. 299; 68 J. P. 197).

Notwithstanding the above decision, the M. of H. appear to consider that in a rural district a water rate levied under s. 10 of the Act of 1878 should, throughout any one contributory place, be a uniform assessment on the net annual value of the premises supplied with water, ascertained by the valuation list. They do not, however, consider it necessary that the water rates should be on precisely the same scale in the several contributory places.

See note (*e*) as to allowing discount for prompt payment of water rates.

"Net annual value."

(*c*) See the definition of *net annual value* in s. 4, *ante*, p. 15. This definition precludes the difficulties of construction which arose as to the meaning of *annual value* in *Warrington Waterworks Co.* v. *Longshaw* (1882), 9 Q. B. D. 145; 46 J. P. 773; *New River Co.* v. *Mather* (1875), L. R. 10 C. P. 442; 39 J. P. 614; *Dobbs* v. *Grand Junction Waterworks Co.* (1883), 9 App. Cas. 49; 48 J. P. 5; *South Staffordshire Waterworks Co.* v. *Barrow* (1897), 61 J. P. 661, and *Woking Water and Gas Co.* v. *Parker*, [1916] 1 K. B. 473; 80 J. P. 188. And see the cases cited in the notes to 10 & 11 Vict. c. 17, s. 68, in App. I., *post*, Vol. II. For the calculation of the annual value where an owner is assessed, see *Smith* v. *Birmingham* (*Corporation of*) (1883), 11 Q. B. D. 195; 47 J. P. 645. As to alterations in "value" during a quarter, see *Metropolitan Water Board* v. *Phillips*, [1913] A. C. 86; 77 J. P. 73.

(*d*) As to the manner prescribed, see s. 211, *post*.

Amount of rate.

In *Worcester Corporation* v. *Droitwich Assessment Committee* (1876), 2 Ex. D. 47, 60; 41 J. P. 355, which was decided with reference to the P. H. A., 1848, MELLISH, L.J., said: "We think that the corporation in making a water rate are bound to make an estimate of the sum they actually require for the maintenance of their waterworks, and cannot legally levy a larger sum by a water rate than the sum they so require." But notwithstanding this dictum, it is submitted that an authority may out of the water rates pay all or part of the expense of providing as well as maintaining the waterworks and of repaying instalments of principal and interest of money borrowed for the purpose of providing the supply. This view is confirmed by the language of s. 229, *post*, defining special expenses. The L. G. B. stated that in their opinion the cost of a scheme of water supply may, and should as far as practicable, be thrown upon the consumers of the water by the charge of either water rates or water rents. The *Worcester Case*, *supra*, was discussed and distinguished in *Hanly* v. *Sligo R. D. C.*, [1918] 2 I. R. 280. It would seem that there is no statutory limit to the amount of the water rate under s. 56. When, however, water is laid on to premises under compulsory procedure the provisions of s. 62, *post*, p. 137, and of s. 8 of the P. H. (Water) Act, 1878, *post*, apply. See also *Horn* v. *Sleaford R. D. C.*, [1898] 2 Q. B. 358; 62 J. P. 502, and other cases to note (*g*), s. 229, *post*.

Note to Section 56.

(*e*) These should be in writing and under seal except in urban districts where the amount does not exceed £50, in which case the seal is unnecessary. See *per* Lord BRAMWELL in *Young* v. *Leamington Corporation* (1883), 8 App. Cas. 517, 522; 47 J. P. 660. As to stamping agreement, see *West Middlesex Waterworks Co.* v. *Suwerkropp* (1829), 4 C. & P. 87; *Gurr* v. *Scudds* (1855), 11 Ex. 190; Stamp Act, 1891, Sched. 1, exemption of agreement for sale of goods; and *County of Durham Electrical Co.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604; 73 J. P. 425, where it was held that an agreement for the supply of electric power for a term of years on payment of a fixed charge per quarter and also one penny per unit is a security for a sum of money at stated periods, and chargeable with duty at the rate of 2*s.* 6*d.* per cent. on the aggregate amount of the minimum annual payments.

Agreements for supply.

In *Ilkeston Corporation* v. *Fretwell* (1916), 80 J. P. N. 4, a supply free of cost for all time for farming purposes had been granted by a water company, predecessors of the plaintiffs to the defendants' predecessor in title. The defendant occupied the farmhouse as a private residence and claimed that the grant covered his use for domestic purposes. It was held that the grant of a supply for farming purposes did not include a supply for domestic purposes to the farmhouse now used as a private residence.

The L. G. B. once stated that where water was supplied by agreement and paid for by a water rent, there did not appear to be anything to prevent the district council from including in the agreement a stipulation that if the rent were paid before a specified date a deduction or discount should be allowed; but that where the water was not supplied by agreement, and payment for it was made by means of a water rate assessed on the net annual value of the premises supplied, such an arrangement would not be applicable.

See s. 58, *post*, p. 133, as to agreements to supply water by measure.

(*f*) See next section. Observe the distinction between water rents which are payable under a special agreement, and water rates which are chargeable on the net annual value of the premises without any such agreement. Another example of a water rent will be found in s. 58, *post*, p. 133.

Incorporation of certain provisions of the Waterworks Clauses Acts.

57. For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act, 1863 (*a*), and the following provisions of the Waterworks Clauses Act, 1847 (*b*); (namely,)

"With respect" (where the local authority have not the control of the street) (*c*) "to the breaking up of streets for the purpose of laying pipes"; (*d*) and

"With respect to the communication pipes to be laid by the undertakers"; and

"With respect to the communication pipes to be laid by the inhabitants"; and

"With respect to waste or misuse of the water supplied by the undertakers"; and

"With respect to the provision for guarding against fouling the water of the undertakers"; and

"With respect to the payment and recovery of the water rates" (*e*).

Provided—

That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction; (*f*) and

Section 57.

That section forty-four of the Waterworks Clauses Act, 1847 (*g*), shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner (*h*).

(*a*) That is 26 & 27 Vict. c. 93. See the statute in App. I., *post*, Vol. II.

(*b*) That is 10 & 11 Vict. c. 17, ss. 28—34, 44—53, 54—60, 61—67, and 68—74. These sections are printed in App. I., *post*, Vol. II. With respect to the incorporation of parts of Acts by reference to the heading, see *Ferrar* v. *Commissioners of Sewers of London* (1869), L. R. 4 Ex. 227; *Hammersmith Rail. Co.* v. *Brand* (1869), L. R. 4 H. L. 171; 30 J. P. 37; *Dungey* v. *London Corporation* (1869), 38 L. J. C. P. 298; *R.* v. *St. Luke's Chelsea* (1871), L. R. 7 Q. B. 148; 36 J. P. 245; *McEwan* v. *Perth* (1905), 7 F. 714; *Fletcher* v. *Birkenhead Corporation*, [1907] 1 K. B. 205; 71 J. P. 111.

Power of authority to make regulations.

On the subject of the powers of both urban and rural district councils to make regulations with respect to the supply of water by them, the M. of H. have pointed out that district councils are not empowered to make regulations enforceable by penalties. The Ministry draw attention, however, to the fact that s. 57 of the P. H. A., 1875, incorporates certain provisions of the Waterworks Clauses Act of 1847, as well as the Waterworks Clauses Act, 1863, and that the provisions thus incorporated enable a district council to control in many important particulars the fittings and apparatus on the premises supplied by them with water. As examples, the Ministry refer to s. 48 of the Act of 1847, which gives the council power to approve of the strength and material of the communication pipes to be laid by the owner or occupier of a dwelling-house; s. 49, which provides for the proper superintendence by their officer of the work of connecting these pipes with the pipes belonging to the council; and s. 50, which enables them to prescribe a maximum limit to the bore of service pipes. For the prevention of waste or misuse of the water supplied by the council, effectual provision has, the Ministry observe, been made in such enactments as ss. 54—60 of the Act of 1847, and ss. 16—20 of the Act of 1863, while the powers of inspection conferred by such provisions as those in s. 57 of the Act of 1847 and s. 15 of the Act of 1863 may be expected to afford the council a ready means of ascertaining whether each of the persons whom they may supply with water complies with the requirements of the statutes.

Where district councils contemplate making regulations in the matter, the Ministry think that the council might be advised to draw up an abstract from the provisions above referred to, or series of extracts from them. To this abstract or selection of sections they might with advantage append a description of the fittings which in their opinion would satisfy the requirements of the Acts. No approval or confirmation of such abstract or extracts on the part of the Ministry is required, or could be given by them.

Power to break open private streets.

(*c*) These words are descriptive of an authority who have not the control of the streets generally in their district. The plaintiff was the owner of a private road in the urban district of the defendants, who had the control of the streets generally in the district, and also the power of supplying the inhabitants with water. The defendants commenced, without the plaintiff's consent, to break up his private road for the purpose of laying down water mains:—*Held*, as above, by the Court of Appeal (A. L. SMITH, L.J., *diss.*), and that the defendants had power under ss. 16 and 54 to lay down pipes in the plaintiff's private road without his consent, making him compensation under s. 308 (*Hill* v. *Wallasey L. B.*, [1894] 1 Ch. 133). Since the passing of the L. G. A., 1894, under which rural district councils became highway authorities, the words in question have little, if any, application.

The M. of H. consider that apart from some special statutory authority private persons and companies have no power to break up public highways even with the consent of the district council; but see as to this, *Edgware Highway Board* v. *Harrow District Gas Co.* and cases cited therewith on pp. 284, 285, *post*.

Note to Section 57.

(*d*) A water company having laid a pipe under the surface of a highway, a leak occurred and the water oozed out. A builder, who had contracted with the owner of the soil of the highway and of the adjoining lands, to make a tunnel under the road, was delayed in his work and suffered damage by reason of the leakage. It was held that (assuming the owner could have maintained an action for damage to his property) the builder's loss of profit on his contract gave him no right of action against the company (*Cattle* v. *Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453; 39 J. P. 791). And see the cases cited in the notes to s. 19, *ante*, p. 77. Liability for leaking pipes.

For a case decided under the Metropolitan Water Board (Various Powers) Act, 1907, as to the liability to pay for reinstatement of the roadway after a leakage had been found by the water authority in the communication pipes of a consumer, the opening up for investigation having been done by the authority, see *David* v. *M. W. B.* (1918), 16 L. G. R. 854; 35 T. L. R. 9.

(*e*) Provision for the recovery of water rates is found in 26 & 27 Vict. c. 93, s. 21, in addition to those in 10 & 11 Vict. c. 17. It has been held that, notwithstanding the incorporation of the provisions of the Waterworks Clauses Act, 1847, as to the recovery of water rates, a water rent due under an agreement for supply of water is a "rate made under this Act" within the meaning of s. 256, *post*, and that the period of limitation applicable to the recovery thereof commences to run on a failure to pay within fourteen days after demand (*Elliott* v. *Russell*, [1902] 2 K. B. 748; 67 J. P. 158). Recovery of water rates and rents

(*f*) See the definition, *ante*, p. 36.

(*g*) See App. I., *post*, Vol. II.

(*h*) Query whether this will overrule any covenants by lessees to bear charges leviable upon lessors, as to which see notes on ss. 104, 226, *post*. The language is only permissive, and may, possibly, be provided for by express covenant. As to whether the deduction must be made from the next rent due, see note on s. 214, *post*.

58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent (*a*) or otherwise for every meter provided by them; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument. Power to supply water by measure

(*a*) This agreement must provide for the payments for the supply of the water, for the use of the meter, and for the penalties in respect of the breaches mutually. It does not appear that there is any summary means of recovering the rent for the meter, but the amount due from time to time will be dealt with as rent due between landlord and tenant, and must be recovered by the ordinary civil process, though apparently there cannot be any distress. The agreement.

This provision for the supply of water by measure was new, so far as the previous sanitary Acts went, though it is found in many local water Acts.

The S. water company were authorised to receive payment by measure, and not by a rate, for water supplied to fixed baths in private houses. There was no express provision in their special Acts or in the Waterworks Clauses Acts as to how the water for such a purpose was to be measured, or whether the company or the consumer was to bear the cost of providing a meter; but by the Waterworks Clauses Act, 1863, s. 14, when the company supply water by measure, they may let to a consumer a meter for such remuneration as they may agree upon:—*Held*, that a consumer taking water for a fixed bath in his private house, was bound at his own Cost of providing meter.

Note to Section 58.

expense to measure the water so used by some automatic and self-registering meter or other instrument, or in some other equally accurate way, and to record the amount from time to time taken (*Sheffield Waterworks Co.* v. *Bingham* (1884), 25 Ch. D. 443, followed in *Dublin* (*Corporation of*) v. *Bray Commissioners*, [1900] 2 I. R. 88). PEARSON, J., who decided *Sheffield Waterworks Co.* v. *Bingham*, *supra*, expressly distinguished it from *Sheffield Waterworks Co.* v. *Carter*, and *The Same* v. *Brooks* (1882), 8 Q. B. D. 632; 46 J. P. 548. In the first of these cases the facts were as follows: The special Act provided for the supply of water for "family use" at certain rates calculated on the rental of the house supplied. It contained further provisions for the supply of water to schools, manufactories, etc., and for purposes other than family consumption, and for baths, etc., and for the purposes of any trade or business whatsoever, at certain rates per thousand gallons. The supply of water having been held obligatory upon the company unless prevented by causes beyond their control, it was held that, there being no provision in the special Act throwing upon the consumer the obligation of providing a meter to measure the water supplied for the purposes of a bath, no such obligation could be implied from s. 14 of the Waterworks Clauses Act, 1863 (*supra*), incorporated with the special Act. In the second case the occupier of a house had a bath connected by means of a pipe with the house cistern, to which water was conveyed from the main for family use. The company required him to put up a meter for the purpose of measuring the water used for the bath, but he refused to do so. He had paid to the company in advance the proper amount in respect of the water supplied for family use for the quarter ending September 29th, but had not paid or tendered any sum in respect of the water supply to the bath for the same period. The company, in consequence of his refusal to put up a meter or disconnect the bath, cut off the communication pipe from the main to his house upon September 20th. On September 29th, having cut off the pipe connecting the cistern with the bath, but not the waste or outlet pipe from the bath, he gave notice to the company of what he had done, and paid to them in advance the proper amount for the supply of water for family use during the ensuing quarter, but did not restore the communication pipe between the main and his cistern. The company refused to restore the supply, on the ground that he had not cut off the waste pipe from the bath, which he refused to do. The supply of water was not renewed till November 4th, when the company restored the communication pipe under protest. It was held that the company was not entitled to insist on the consumers providing a meter, but that they were not liable to a penalty under the Waterworks Clauses Act, 1847, s. 43, for not supplying water during the period from September 20th to September 29th, inasmuch as no tender or payment in respect of the water supply to the bath for such period had been made. But it was held that they were liable to a penalty in respect to the period subsequent to September 29th: that they had no right to refuse the supply of water after that date, and that they were not justified in cutting off the supply, and were, therefore, not entitled to require the consumer to renew the communication. These cases show that the agreement to supply water by measure under the above section must contain express stipulations, as to the provision and rent of the meter. In the absence of such stipulations, it is submitted that the consumer cannot be compelled to provide or to pay rent for a meter, though he may be bound to provide some automatic and self-registering instrument to keep a record of the water used. And see *Weaver* v. *Cardiff* (*Corporation of*) (1883), 48 L. T. 906.

For a case where a covenant to give a free supply to a "a farm house" was held determined by its conversion into a mansion, see *Hadham R. D. C.* v. *Crallan*, [1914] 2 Ch. 138.

For a case where a contract to take water by meter was implied from the circumstances as to the supply in the past, see *Trowbridge Water Co.* v. *Wilts C. C.*, [1909] 1 K. B. 824; 73 J. P. 280.

In *Gt. Northern Rail. Co.* v. *Bradford Corporation* (1919), 83 J. P. 33; 17 L. G. R. 1, it was held that where a railway company has obtained a supply of water by meter to a railway station this does not authorise the use of part of the supply for another railway station.

As to the stamping of such agreements, see note (*e*) to s. 56, p. 131, *ante*.

See *Stanley Bros.* v. *Nuneaton Corporation* (1913), 77 J. P. 349, for a case where

customers having under a mistake as to the effect of an agreement paid too high a price for water failed to recover the excess.

Note to Section 58.

When water is supplied by measure it is the subject of larceny (*Ferens* v. *O'Brien* (1883), 11 Q. B. D. 21; 47 J. P. 472).

Larceny of water.

59. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be primâ facie evidence of the quantity of water consumed; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a court of summary jurisdiction (*a*), and such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding (*b*).

Register of meter to be evidence

(*a*) See the definition, *ante*, p. 36. In the supply of electricity under the Electric Lighting (Clauses) Act, 1899, clause 57 of the Schedule provides that an electric inspector shall be appointed for the settlement of disputes as to meter registrations. In *Hendon Electric Supply Co.* v. *Banks* (1918), 82 J. P. 228; 16 L. G. R. 68, it was held that failure to appoint an inspector deprived the plaintiffs of their cause of action for debt for electricity supplied.

(*b*) These costs will be a civil debt within the meaning of the S. J. A., 1879, ss. 6, 35, 47, and payment of them may be enforced accordingly. See s. 251, and the notes thereon, *post*.

60. If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings (*a*), and the local authority may, in addition thereto, recover the amount of any damage sustained (*b*). The existence of artificial means, under the control of the consumer, for causing any such alteration prevention abstraction or use shall be evidence (*c*) that the consumer has fraudulently effected the same.

Penalty for injuring meters.

(*a*) See, as to the recovery of penalties, s. 251, *post*. The authority may have some other right or remedy under the agreement, as to which see s. 58 and note (*a*) thereto. There may, too, be a criminal remedy for larceny of the water under certain circumstances. See *Ferens* v. *O'Brien*, *supra*.

(*b*) The amount of the damage is not a penalty, and payment of it will apparently have to be enforced as a civil debt under the S. J. A., 1879, if it is recovered at the same time and in the same proceeding, as the section appears to intend.

(*c*) This is only primâ facie, not conclusive, evidence or proof.

61. Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of any adjoining (*a*) district on such terms as may be agreed on between such authorities, or as, in case of dispute (*b*), may be settled by arbitration in manner provided by this Act.

Power to supply water to authority of adjoining district.

(*a*) As to the meaning of the word "adjoining," as used in s. 150, see *Cave* v. *Horsell*, and other cases cited therewith in notes to that section, p. 302, *post*; and see

"Adjoining."

Note to Section 61.

also *Haynes* v. *King*, [1893] 3 Ch. 439; 69 L. T. 855, and *Wellington Corporation* v. *Lower Hutt Corporation*, [1904] A. C. 773, where the Privy Council considered the expression "*adjacent* borough . . . or district," and held that it was not confined to districts actually contiguous. The L. G. B., however, as well as their successors, the Ministry of Health, have always held a rigid view that the word adjoining in s. 61 means actually contiguous. The defect would have been dealt with in the Administrative Provisions Bill of 1921 if that Bill had passed.

Effect of the section.

In *Halifax Corporation* v. *Soothill Upper L. B.* (1874), 31 L. T. 6, a corporation were empowered to collect all the water from the gathering grounds of a district, but were bound to supply to the township of T. not less than 25,000 gallons, nor more than 75,000 gallons per day at a fixed price, the amount (between the maximum and the minimum) to be at the option of the purchaser. It was held that T. might call for more than 25,000 gallons per day for the purpose of selling part of it at a profit to a neighbouring township.

The above case was decided before the present Act came into operation, and the foregoing section, which was altogether new, recognises the power of one authority to supply another with water. It was the view of the L. G. B. that the section only applied when the works of the supplying authority were provided and carried on under the Public Health Acts. The Ministry of Health now hold, however, that the section gives an additional power to local authorities having water undertakings regulated by a local Act enabling them, unless there is an express prohibition in that local Act to supply an adjoining authority with the sanction of the Ministry. Any application to the Ministry must be made by the clerk, who should forward a copy of the resolution directing it and a copy of the draft agreement between the two authorities. This agreement, when sanction has been obtained, should be under seal. The section only requires the sanction of the Board to the fact of the supply, and not to the terms of the agreement (although these are considered), and it empowers the Ministry to give a limited sanction, *i.e.*, for a supply to part of an authority's district, in which case a fresh sanction must be obtained, if it be desired to supply a larger part of the district (*Soothill Upper U. D. C.* v. *Wakefield R. D. C.*, [1905] 2 Ch. 516; 69 J. P. 447). It was in the last-mentioned case also decided that an agreement to supply water in specified quantities to a district does not imply necessarily an agreement to supply water at such a pressure as will give a continuous supply at all parts of the district.

If the council receiving the supply propose to borrow money with the sanction of the M. of H. for works of distribution, it is very important that in the agreement they should secure a right to receive the water for a definite term of years, not less than the period proposed for the repayment of the loan.

It will be observed that the water must be supplied to the authority of the "adjoining" district, and not directly to particular consumers in that district.

As to the spot at which a supply is deemed to be given and taken by a company and consumer respectively, see *Att.-Gen.* v. *West Gloucestershire Water Co.*, on p. 120, *ante*. See also *Morpeth Corporation* v. *Tynemouth Corporation*, *ante*, p. 129.

In *Halifax Corporation* v. *Morley Corporation* (1894), 10 T. L. R. 454, the defendants' special Act provided that they should not either directly or indirectly supply any water, nor enter into any contract whereby water might be either directly or indirectly supplied or used within the water supply limits of the plaintiffs, nor within any place within which water was at the time of the passing of the special Act either directly or indirectly supplied by the plaintiffs. The defendants supplied water to the works of a railway company within the district of a rural authority who supplied within their own district water obtained by them from a local board which received its supply from the plaintiffs, and was so receiving it at the time of the passing of the defendants' special Act. It was held that the action of the defendants in supplying the railway company was contrary to their Act. See also *Seton* v. *Linlithgow Burgh Commissioners* (1900), 37 Sc. L. R. 715.

In *Tynemouth Corporation* v. *Newbiggin-by-the-Sea U. D. C.* (1916), 80 J. P. 195; 14 L. G. R. 322, an agreement was entered into in April, 1907, for the plaintiffs to supply the defendants in bulk for the whole of their district. Subsequently the defendants' district was enlarged by the addition of two parishes and the question arose on the construction of the agreement as to whether the defendants were entitled

to a supply sufficient for their district as now being, or were restricted to a supply sufficient for their district as existent at the date of the agreement. It was held that the defendants were not entitled to a supply for the added areas. **Note to Section 61.**

An Act amalgamating a railway company and a dock company provided that none of the provisions of the Acts which would have related respectively to the dock company and the railway company exclusively, if the amalgamation had not taken place, were to apply to any portion of the undertaking of the other company. Before the amalgamation the dock company had obtained its water supply from the waterworks of a neighbouring corporation. The railway company had a supply of water from land acquired for railway purposes before the amalgamation. After the amalgamation it ceased to use the corporation's water and supplied the docks with water from its own land. The corporation sought to restrain the railway company from so doing. It was held, that since the amalgamation it was not *ultra vires* of the railway company to use its water for the supply of the dock (*Att.-Gen.* v. *N. E. Rail. Co.*, [1906] 2 Ch. 675; 70 J. P. 473).

(*b*) It may be that this refers to any subsequent dispute, as for instance to the terms of the agreement. As to the provision for arbitration, see s. 179, *post*.

Where the terms arranged yield to the supplying authority a surplus over the cost to them of giving the supply, such surplus is assessable in their hands to income tax, including a part applied to a sinking fund (*Harris* v. *Irvine Corporation* (1900), 65 J. P. 663). See also *Mullingar R. D. C.* v. *Rowles*, [1913] 2 I. R. 44; *Sugden* v. *Leeds Corporation* and other cases, as to income tax collected in the notes to s. 211, *post*. Income tax on profit earned.

62. Where on the report of the surveyor (*a*) of a local (*b*) authority it appears to such authority that any house (*c*) within their district is without a proper supply of water (*d*), and that such a supply of water can be furnished thereto at a cost (*e*) not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority (*f*), determine under all the circumstances of the case to be reasonable (*g*), the local authority shall give notice in writing to the owner (*h*), requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose. Local authority may require houses to be supplied with water in certain cases.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works (*i*), and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district (*k*); and water rates (*l*) may be made and levied on the premises by the authority or company which furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same; and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner (*m*) from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses (*n*).

(*a*) See the definition as to a surveyor of the rural authority in s. 4, *ante*, p. 7, and *cf.* note (*d*) to s. 16, *ante*, p. 56.

(*b*) This section applies both to urban and rural districts. It is not repealed by the Public Health (Water) Act, 1878, *post*, although that Act gives increased powers to compel the provision of a supply to houses in rural districts (*Colne Valley* Section applies to rural districts.

Note to Section 62.

Waterworks Co. v. *Treharne* (1884), 48 J. P. 279; 50 L. T. 617; see also s. 8 of the L. G. A., 1894, *post*).

(*c*) It is a question of fact whether premises, *e.g.*, a "lock-up" shop, are a "house" within the meaning of the section (*Wootten* v. *Bishop* (1907), 71 J. P. 334; 96 L. T. 705).

"Proper supply."

(*d*) These words in former Public Health Acts were read as signifying a supply of proper water, a well containing a supply of water, but polluted, not being a "proper supply" of water. This is probably a correct interpretation of the words, though, of course, they primarily apply to the case of a mere deficiency of water. See the provision as to lodging-houses in s. 81, *post*, p. 157.

Cost of supply.

(*e*) The cost referred to is the cost of the supply of water, and is quite distinct from the expense of bringing the supply to the premises. It is to be noted also that the section appears to apply only when a supply can be obtained from the mains of a company or of the authority. This construction results from the use of the words *furnished thereto*, which would be inapplicable to the case of a well, etc. provided at a distance from the house; and at the latter end of the section it is provided that water rates may be levied on the premises by the authority or company supplying the water. See the evidence of the Secretary to the L. G. B. before a Select Committee of the House of Commons in 1878, at pp. 11, 12 of the report. And see *per* STEPHEN, J., in *Southend Waterworks Co.* v. *Howard*, *infra*, note (*l*).

The limitation as to the cost of providing a water supply to a house contained in s. 3 of the Public Health (Water) Act, 1878, does not apply to s. 62, *supra*. Where, under s. 62, an owner is required by the authority to obtain a water supply from an unreasonable distance, it is competent to him to appeal to the M. of H. under s. 268, *post*, against a demand for payment (*West Lancashire R. D. C.* v. *Ogilvy*, [1899] 1 Q. B. 377; 63 J. P. 166).

(*f*) See s. 61, note (*a*), *ante*, p. 135, as to the mode of making this application.

Orders of the Local Government Board.

(*g*) This alternative was new in 1875. Although inconvenient, it appears to be necessary that the Board should make an order separately for every case, though probably several may be embraced in the same document. The Public Health (Water) Act, 1878, s. 8, *post*, however, provides that where application is made to the Board by an authority under s. 62 of this Act, to determine what is a *reasonable cost* within the meaning of that section, the Board may for that purpose fix, by order, a general scale of charges for the whole or any part of the district of the authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges. When application is made to the M. of H. (successors of the L. G. B.) under s. 62 to determine the *reasonable cost* for the purposes of the section, and to fix a general scale of charges for the district, it should be borne in mind that the Ministry, under the section as amended by the Act of 1878, can only determine the reasonable cost at which a supply of water can be furnished compulsorily to houses which are without a proper supply. The Ministry state that, if there is no local Act in force authorising the levying of a water rate, and a supply is furnished by the district council pursuant to a requisition by a person entitled under s. 44 or s. 53 of the Waterworks Clauses Act, 1847, as incorporated by s. 57 of the present Act, the charges which the council may make for the supply are not controlled by the scale applicable to cases of enforced supply under s. 62, and they may under s. 56, charge in respect of the supply a water rate to be assessed on the net annual value of the premises supplied, or they may enter into an agreement with the consumer for the supply on terms which may include the payment of a water rent.

No scale of charges approved by the Ministry is required to enable a district council to compel the laying on of a supply to a house where the charge for the supply is not to exceed twopence a week. The Ministry have stated that it is competent to a district council at any time to reduce the charges in cases to which an order applies. It is contrary to their practice to approve a scale which contemplates the allowance of a discount for prompt payment.

(*h*) See definition in s. 4, *ante*, p. 8. The notice must proceed from the authority, not from the surveyor or other officer. See *St. Leonard's, Shoreditch* (*Vestry of*) v. *Holmes* and *Bowyer* v. *Mather*, *ante*, p. 84.

Note to Section 62.

(*i*) In order to strengthen their power of entry upon premises for the purposes of this section *urban* authorities sometimes apply to the M. of H. for the powers of a rural district council under s. 7 of the Public Health (Water) Act, 1878. See *post*.

Power of entry.

(*k*) This was new in 1875. See s. 174, *post*, as to the making of contracts.

Making and levying of rates.

(*l*) As to how water rates may be made and levied, see 10 & 11 Vict. c. 17, ss. 68—74, and 26 & 27 Vict. c. 93, s. 21, incorporated herewith by s. 57, *ante*, p. 131, and set out in App. I., *post*, Vol. II.

An authority caused a water main to be laid along a street, and gave notice to the owner of a house in such street, under this section, to obtain a proper supply, and do all such works as might be necessary for that purpose. The notice was not complied with, and the authority did not exercise the power given to them by the section of executing the works necessary to connect the house with the main. In an action by the water company for water rates, it was held that the defendant was liable, and that it was not a condition precedent to such liability that the works necessary to bring the water into the house should have been executed (*Southend Waterworks Co.* v. *Howard* (1884), 13 Q. B. D. 215; 48 J. P. 469).

(*m*) See s. 251, *post*. For a definition of owner, see s. 4, *ante*, p. 8. It will be seen that though the occupier may be required to pay for the supply of the water, the owner is to pay the cost of the works. As to the cases in which an owner may be compelled to pay the water rates, see 10 & 11 Vict. c. 17, s. 72, in App. I., *post*, Vol. II. No preliminary determination of the authority as to the necessity for the works need be proved in any proceeding to recover the expenses (*Caballero* v. *Lewis* (1874), 38 J. P. 614).

(*n*) See, as to these expenses, s. 213, *post*, and as to appeals to the M. of H. see s. 268, *post*.

Powers of water company for supplying water to local authority.

63. Any water company may contract to supply water or may lease their waterworks to any local authority; and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862 (*a*), of a special resolution of the members passed in manner provided by that Act (*b*), and in the case of any other company of a resolution passed by three-fourths (*c*) in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights powers and privileges, and all or any of the waterworks premises and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

(*a*) Now the Companies (Consolidation) Act, 1908. A similar provision with regard to gas and market companies will be found in ss. 162 and 168, *post*. For the power of a council to purchase waterworks, and for decisions upon the construction of "purchase clauses" in deeds and statutes, see s. 51, *ante*, p. 119, and the notes thereto.

(*b*) See 8 Edw. 7, c. 69, ss. 69, 70.

(*c*) The L. G. A., 1858, s. 63, required a resolution of three-fifths. The directors may contract or lease of themselves; but can only sell with consent of the shareholders.

Vesting of public cisterns, etc. in local authority.

64. All existing public cisterns pumps wells (*a*) reservoirs (*b*) conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall (*c*) vest in and be under the control of such authority, and such authority may (*d*)

Section 64. cause the same to be maintained and plentifully supplied (*e*) with pure and wholesome water (*f*), or may substitute (*g*) maintain and plentifully supply with pure and wholesome water (*f*) other such works equally convenient; they may also (subject to the provisions of this Act) (*h*) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use (*i*).

"Public" wells.

(*a*) A well on private ground, the water of which had been used for domestic purposes gratuitously by the inhabitants in the vicinity for the prescriptive period, was held to be a public well within the meaning of the corresponding provisions of the Public Health (Scotland) Act, 1867, s. 89 (4), and it was also held that the local authority might enter upon the land and do all acts to the well for continuing and maintaining it, which the inhabitants might have done before, even though there might be a company with a vested right to supply the inhabitants with water (*Smith* v. *Archibald* (1880), 5 App. Cas. 489). The facts in that case were as follows: Situated in one corner of a field in the parish of D. was a well. From the well to the entrance of the field there was a footpath, and from that entrance to the public road going through the village of D. there was a cart road. The inhabitants of D. had for the prescriptive period used the water of the well for domestic purposes, and had, among other acts done to the well, cradled it with stones at their own expense. The local authority, acting under the section already mentioned, caused the well to be covered in with an iron plate, and placed therein a hand pump with the avowed object of keeping the well free from pollution. The proprietor of the field, alleging the well to be his private property, instituted proceedings to compel the authority to remove the cover and pump. It was held by the House of Lords that the well was a public well within the meaning of the statute, and that the authority, as representing the inhabitants, had not done anything in excess of their powers. This decision was followed and applied in very similar circumstances in *Dungarvan Guardians* v. *Mansfield*, [1897] 1 I. R. 420. In *Holmfirth L. B.* v. *Shore* (1895), 59 J. P. 344, a stone trough receiving water from a spring at some distance from it, was held to be either a "well" or a "reservoir." WRIGHT, J., pointed out that the Scotch Act does not vest the wells, etc. in the local authority, so that the powers of an authority are wider under the English Act. See also *Att.-Gen.* v. *Tonkin* (1901), 18 T. L. R. 29. As to customary and prescriptive rights to draw water from a spring, see *Harrop* v. *Hirst* (1869), L. R. 4 Ex. 43; 33 J. P. 103, and *Dungarvan Guardians* v. *Mansfield*, *supra*.

"Reservoir."

(*b*) In *Leadgate L. B.* v. *Bland* (1881), 45 J. P. 526, KAY, J., held that a natural pond was a "reservoir" within the section, having been used by the public for a number of years for the purpose of watering horses.

"Vesting."

(*c*) By the previous Public Health Acts, such cisterns, etc., had been vested in the respective local authorities, so that this section only continues the vesting already established. As to the meaning of the phrase *vest in*, see s. 13, note (*h*), *ante*, p. 47, and the notes to s. 149, *post*, p. 273. The effect of it is to enable the authority to bring an action in their own name (and not in the name only of the Attorney-General) for damages for any interference with the well itself, although such interference is not proved to be injurious to the public rights. But an action for damages for interfering with public access, or for an injunction to restrain interference with access, must be brought in the name of the Attorney-General (*Holmfirth L. B.* v. *Shore*, *supra*).

A parish council has no power to bring an action on behalf of the inhabitants of the parish, even for the purpose of restraining interference with their access to a pump properly erected by the council, under the powers given by s. 8 (1) of the L. G. A., 1894 (*Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277; 63 J. P. 502).

Where an abandoned shaft of a disused mine within the meaning of the Metalliferous Mines Regulation Act, 1872, has become a public well, and as such vested in a local authority under this section, the authority are not the "owners" of the shaft within the meaning of s. 41 of the first-named Act, so as to render them liable under s. 13 to fence it (*Knuckey* v. *Redruth R. D. C.*, [1904] 1 K. B. 382; 68 J. P. 172).

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(*d*) *Quære*, how far the word casts a duty on the authority. They may maintain public wells, etc., although there is a company which supplies the district with water. "What the Act says is, notwithstanding that there might be a company with a vested right to supply the inhabitants, the local authority may, where there is a public well, and where there is a public right to be gratuitously supplied (from it), continue and maintain that well" (*per* Lord BLACKBURN, in *Smith* v. *Archibald*, *supra*, upon the somewhat similar Scotch Act).

Duty and powers of authority.

(*e*) In *Edwards* v. *Joliffe*, W. N. (1877) 120, an injunction was granted at the suit of the plaintiff, through whose estate a lane passed, to restrain the defendant, a servant of the surveyor of highways, from digging holes in the roadway of the lane under these circumstances. On a piece of land not actually part of the lane, but entirely open to it, were five public wells which suddenly failed. The highway board, with the sanction of the rural sanitary authority, in whom the wells were vested under this section, ordered the defendant to dig the holes either to recover the water or to discover the cause of its having ceased to flow. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water, and the defendant said he had no doubt the supply of water to the wells had been tapped by the plaintiff's operations:—*Held*, that the section did not authorise the authority to enter another man's land and help themselves to water. There was no suggestion that the plaintiff had done anything more than he was entitled to do, or that the defendant was not entering his land.

(*f*) If the well, etc., does not contain pure and wholesome water, and the local authority does not care to maintain it, they may close it under s. 70, *post*, p. 148.

(*g*) This would appear to refer to a substitution of the new works in the same place as the old. If so, this right would appear to be independent of the restriction imposed upon the local authority by s. 52, *ante*, p. 125, as to the construction of waterworks.

Notice to water company.

(*h*) This appears to refer to s. 52. If there is a water company supplying the district, the local authority would seem to require their consent to the gratuitous provision of water to the inhabitants.

"Gratuitous" supply.

(*i*) A local Act empowered the local board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of cattle in the market, and for horses, if yoked, when passing to and fro. The respondent, who kept horses, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information against him under the Waterworks Clauses Act, 1847, s. 59, *post*, the magistrates being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the gratuitous use of the public under the corresponding section of the P. H. A., 1848, declined to convict. On appeal, it was held that they were wrong, for notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will (*Hildreth* v. *Adamson* (1860), 8 C. B. (N.S.) 587; 25 J. P. 645). The effect of this case is that an authority may, if they think fit, limit the purposes for which the gratuitous supply is provided. The court refrained from expressing any opinion as to whether a fountain for gratuitous supply might by virtue of this section be erected on a public highway. And it may be observed that while the P. H. A., 1890, s. 42, enables an urban authority to authorise the erection of a statue or monument in a street, it does not mention a fountain.

The corporation of H., in exercise of their powers as a local authority, erected a drinking trough in the main street, in front of the plaintiffs' premises:—*Held*, that, although some annoyance was caused to the plaintiffs by the placing of the trough in front of their premises, there was no sufficient evidence of the existence of a legal nuisance to justify the interference of the court (*Baker* v. *Hertford* (*Corporation of*) (1900) Ch. D. (BUCKLEY, J.), May 17th, 1900).

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In *McLoughlin* v. *Warrington Corporation* (1911), 75 J. P. 57, a plaintiff recovered damages against a local authority in respect of injuries caused by a stone falling upon him from a drinking fountain belonging to the defendants and erected in a highway. The stone was dislodged by a person climbing the fountain to view a procession, but the fountain was alleged to be in a defective condition.

As to the erection of stand-pipes by a rural authority or by an urban authority under an order of the M. of H., and as to the rating of persons using water from such stand-pipes, see the Public Health (Water) Act, 1878, ss. 9—11, *post*.

A local authority, in whom a public well is vested by this section, has no power to grant a licence to abstract water from the well for the purpose of bottling and selling, so as to sensibly diminish the supply of water to riparian proprietors along a stream fed by the well (*Mostyn* v. *Atherton*, [1899] 2 Ch. 360).

Water for public baths, or trading or manufacturing purposes.

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses (*a*), or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied (*b*); moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor or borough rates (*c*).

(*a*) See the Baths and Wash-houses Acts, as defined by s. 4, *ante*, p. 35.

(*b*) It is optional with the local authority whether they will supply water for these purposes or not. They are obliged to supply water for domestic purposes if they undertake the supply of water to the district. See s. 55, *ante*, p. 128, and see the Waterworks Clauses Act, 1847, s. 53, in App. I., *post*, Vol. II.

The agreement should be in writing, and under the seal of the parties.

(*c*) It is not quite clear what is referred to by these latter words, as public baths and wash-houses are supported out of public funds.

Duty of urban authority to provide fire-plugs.

66. Every urban authority (*a*) shall (*b*) cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall (*c*) paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

Position of rural authorities.

(*a*) It will be observed that only urban authorities are placed under this obligation; and as there is no other distinct enabling section, rural district councils are given no express powers under the Act for the provision of fire-plugs, hydrants and other appliances for furnishing water for fire brigade purposes. Where, however, a rural council provide a public water supply for a parish in their district they may be presumed to have power to fix fire hydrants in the mains as part of the works of water supply which they may carry out under s. 51. In other cases, if power to provide hydrants is required, they should apply to the M. of H. for an order under s. 276. In view of the imperative character of s. 66, it is the Ministry's practice to restrict such orders to the particular parish or parishes in which the appliances are shown to be required, and in which the council are prepared to take action. In the opinion of the department a parish council has no power to provide hydrants.

Duty of authority.

(*b*) Note that these words are imperative, and require the urban authority to make this provision. See *Grand Junction Waterworks Co.* v. *Brentford L. B.*, *infra*, *per* LINDLEY, L.J., [1894] 2 Q. B. 735, at p. 738. The clause is introduced from the

Towns Improvement Clauses Act, 1847, s. 124. Nothing, however, in the present section or in the Waterworks Clauses Act, 1847, ss. 38—41, imposes on an urban authority any obligation to bear the expense of maintaining in repair the fire-plugs in their district, unless such fire-plugs have been fixed by them or by some water company or other person at their request (*Grand Junction Waterworks Co.* v. *Brentford L. B.*, [1894] 2 Q. B. 735; 59 J. P. 51).

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A private water Act provided that the company should, at the request of an owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company was or should be laid, and who required a supply of water, afford a supply of water. The plaintiff declared upon the section so providing, and stated that he was such an owner and occupier, and that he requested and required a supply of water, but that the company made default in affording to him the said supply, by reason whereof he was unable to extinguish a fire which destroyed his premises. The defendants pleaded that the main or service pipe had a certain fire-plug properly fixed in it, and that the said fire-plug was opened for the purpose of extinguishing another fire, which was the cause of the default. They also pleaded that they were prevented from affording the said supply of water from unavoidable cause or accident:—*Held*, on demurrer, that the former plea was good, but the latter bad (*Campbell* v. *East London Waterworks Co.* (1872), 36 J. P. 711; 26 L. T. 475).

Provisions of the Waterworks Clauses Act, 1847.

By the Waterworks Clauses Act, 1847, the undertakers are: (1) to fix and maintain fire-plugs; (2) to furnish to the town commissioners a sufficient supply of water for certain public purposes; (3) to keep their pipes to which the fire-plugs are fixed at all times charged with water at a certain pressure, and to allow all persons at all times to use the same for extinguishing fire without compensation; and (4) to supply to every owner or occupier of any dwelling-house, having paid or tendered the water rate, sufficient water for domestic purposes. Penalties are imposed by the Act for neglect of each of the above duties. The plaintiff brought an action for damages against a waterworks company for not keeping their pipes charged as required by the Act, whereby his premises were burnt down:—*Held*, reversing the Court of Exchequer, that the statute gave no right of action to the plaintiff (*Atkinson* v. *Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441; 42 J. P. 183). But the decision in this case was held not to apply in an action for injuries sustained by the bursting of a fire-plug in a highway, the penalty being for failing to keep the pipes charged in case of fire (*Hancock* v. *Southwark and Vauxhall Waterworks Co.*, W. N. (1889) 198). On the other hand it was held to apply to an action for failing to supply water to an occupier (*McColla* v. *Clacton-on-Sea Gas and Water Co.* (1889), 5 T. L. R. 690). An urban authority requested a water company which supplied their district, and whose provisional order incorporated the Waterworks Clauses Act, 1847, to fix a fire-plug at a spot in a street where it was essential that a fire-plug should be placed, but where the existing pipe of the company was of insufficient capacity to carry a proper fire-plug. The company were willing to place a proper fire-plug at the point, provided the authority would pay the expense of laying a new length of three-inch main instead of the existing one-inch pipe. An information having been laid against the company, charging them with neglecting to fix the fire-plug, the company were convicted and fined. But it was held on a case stated that the duties of the company as to the supply of water were regulated by s. 35 of the Act of 1847, which provides for a constant supply for domestic use, and that s. 38 imposed no duty on the company to provide pipes of such capacity that fire-plugs could be affixed to them suitable for the supply of water for extinguishing fires and that the conviction must therefore be quashed (*Wells Water Co.* v. *Wells Town Council* (1886), 51 J. P. 135; 55 L. T. 188). The water which may be taken by all persons at all times for extinguishing fire without compensation, under s. 42 of the Waterworks Clauses Act, 1847, is the water from undertakers' pipes to which fire-plugs are fixed (*Weardale and Consett Waterworks Co.* v. *Chester-le-Street Co-operative Society, Ltd.*, [1904] 2 K. B. 240; 68 J. P. 386). See also judgments of his Honour Judge BRADBURY, noticed in 70 J. P. N. 472, and of his Honour Judge WOODFALL, in Journal of Gas Lighting, 1907, p. 988.

A water company which has provided hydrants pursuant to the Metropolitan Fire Brigade Act, 1865, s. 32, and the Metropolis Water Act, 1871, s. 34, or either of these sections, may, in the absence of any agreement under the London County

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Council (General Powers) Act, 1894, s. 4, and without the consent of the County Council, lawfully use such hydrants for purposes other than the supply of water for extinguishing fires and the purposes specified in the Waterworks Clauses Act, 1847, s. 37, and such user may, with the permission of the company, be exercised by other persons also (*London C. C.* v. *East London Waterworks Co.*, [1900] 1 Q. B. 330).

Liability for accidents due to fire-plugs.

A water company, having observed all statutory directions in laying down their pipes, are not responsible for an escape of water from them not caused by their own negligence. The fact that their precautions prove insufficient in a winter of extreme coldness, such as could not have been foreseen, is not sufficient to render them liable for negligence. Fire-plugs properly constructed having been inserted in these pipes in pursuance of the Act, *semble*, *per* BRAMWELL, B., that the company are not liable for an accident caused by the accumulation of ice in a street over a plug (*Blyth* v. *Birmingham Waterworks Co.* (1856), 11 Ex. 781 ; 20 J. P. 247).

Although a water company is not liable for the unforeseen results of an extraordinary frost, yet they are bound to take reasonable care to provide against the consequences of ordinary frost. Where it appeared that it was known that the effect of frost would be to cause plugs in the water pipes to start, and thus to let the water out at the side, and that some precautions might have been taken, if not to prevent this, at all events to prevent the water from escaping through the soil, and, no such precautions having been taken, the plugs started in a frost of extraordinary severity, and the water thus escaping, ran through the soil into the plaintiff's cellar :—*Held*, that there was some evidence of negligence on which a jury might hold the company liable (*Steggles* v. *New River Co.* (1863), 11 W. R. 234 ; affirmed, 13 W. R. 413).

By a local Act a waterworks company was bound at the request of the Town Improvement Commissioners to fix fire-plugs in their mains, and to repair and keep them in order at the cost of the commissioners, in whom the property in the plugs was vested by their Improvement Act. In consequence of the cap of one of the plugs provided under the Act being broken, a horse placed his foot in the plug-hole and was lamed :—*Held*, that the waterworks company and not the commissioners were liable for the injury (*Bayley* v. *Wolverhampton Waterworks Co.* (1860), 25 J. P. 199 ; 6 H. & N. 241).

It will be found stated in the notes to s. 144, *post*, p. 254, that though a local authority are not liable for accidents caused by the mere non-repair of highways, they may be responsible not as surveyors of highways, but in another capacity as the owners of drains, water-pipes, fire-plugs, etc., in the highway. Thus, in *Blackmore* v. *Mile End Old Town* (*Vestry of*) (1882), 9 Q. B. D. 451 ; 47 J. P. 52, an authority were held liable for an accident caused by an iron flap placed in the highway over a water meter, the flap having worn smooth and become slippery and dangerous. But where the same body are both the highway authority and the water or sewer authority they cannot be held responsible for accidents caused by the wearing away of the road allowing the edge of a manhole cover or a sewer grating or a water valve cover to project dangerously above the surface of the road, the cover or grating not being in itself out of repair or improperly constructed (*Thompson* v. *Mayor, etc. of Brighton ; Oliver* v. *Horsham L. B.*, [1894] 1 Q. B. 332 ; 58 J. P. 297 ; overruling *Kent* v. *Worthing L. B.* (1882), 10 Q. B. D. 118 ; 47 J. P. 23. See also *Winslow* v. *Bushey U. D. C.* (1908), 72 J. P. 259). It had previously been held that a water company authorised by statute (10 & 11 Vict. c. 17, s. 38) to place fire-plugs in a highway, and required to keep the plugs in repair, but having no power to repair the highway, is not bound to vary the level of such plugs from time to time if and as the surface of the road wears away. If the fire-plug is properly placed in the first instance, and is kept in repair, the company will not be liable for a personal injury to one of the public by reason of the projection of the plug above the level of the highway (*Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462 ; 50 J. P. 756). Compare, however, with these cases *Papworth* v. *Battersea Borough Council*, [1914] 2 K. B. 89, reversed on appeal, [1915] 1 K. B. 392.

The plaintiff, leaning on his stick, as he walked down a street, put it into a hole, in which was a stop-cock, fell, and broke his leg. A new trial was asked for on the ground that there was no evidence that the defendant company were responsible

Note to Section 66.

for having put or kept the unsafe box in which the stop-cock was fixed. The defect in the fitting of the stop-cock was that it was contained in an old-fashioned "box," with a deep open hole to admit the key for turning the water off and on, instead of a closed box of the pattern now used. There was evidence that an officer of the company had been seen superintending the putting down the stop-cock. The box was impressed with the name of the company. It had been supplied by them, and they had a regulation made under statutory authority, requiring such work to be done for occupiers and owners by themselves:—*Held*, that there was evidence of negligence on the part of the defendants for which they were liable (*Strube* v. *Southwark and Vauxhall Water Co.* (1888), 5 T. L. R. 638; affirming 53 J. P. 424; 5 T. L. R. 451. See also *Stockings* v. *Lambeth Waterworks Co.* (1891), 7 T. L. R. 460; *Osborn* v. *Metropolitan Water Board* (1910), 74 J. P. 190; 102 L. T. 217; *Rosenbaum* v. *Metropolitan Water Board* (1910), 75 J. P. 12; 103 L. T. 739; and *cf. Chapman* v. *Fylde Waterworks Co.*, in the notes to s. 28 of the Waterworks Clauses Act, 1847, in App. I., *post*, Vol. II., and *Colne Valley Water Co.* v. *Hall* (1907), 72 J. P. 25; 98 L. T. 398).

In *Simpson* v. *Metropolitan Water Board* (1917), 15 L. G. R. 629, it was held that where the proximate cause of the raising of an iron plate, lid or covering of a water apparatus in a street of the Metropolis above the level of the pavement so as to be a dangerous obstruction by sticking up is the malicious act of a third person against which precautions would have been inoperative the board is not liable to any one thrown down by it and hurt in the absence of a finding that the occurrence could or ought to have been foreseen and provided against.

With reference to the foregoing decisions it must be noticed that within the area supplied by the Metropolitan Water Board communication pipes from a main to houses, and stop-cock boxes connected therewith, are now by virtue of the Metropolitan Water Board (Charges) Act, 1907, ss. 8, 19, repairable (whenever laid or constructed) by the owners or occupiers of the houses. Therefore, an owner or occupier, and not the Board, is liable to a passenger for injuries due to a defective box (*Batt* v. *Metropolitan Water Board*, [1911] 2 K. B. 965; 75 J. P. 545; and see also *Mist* v. *Metropolitan Water Board* (1915), 79 J. P. 495).

See *Plantza* v. *Glasgow Corporation*, [1910] S. C. 786, for a case of injury due to collision with a turnkey standing in a stop-cock.

During the recent war there were a number of cases of accidents arising from obstructions, etc. in highways, and in which negligence was alleged. Each of these cases arose out of the public lighting restrictions imposed during the war. See *Gt. Central Co.* v. *Hewlett*, [1916] 2 A. C. 511; 80 J. P. 361; *Morrison* v. *Lord Mayor, etc. of Sheffield*, [1917] 2 K. B. 866; 81 J. P. 277; *Baldock* v. *Westminster City Council* (1919), 83 J. P. 98; 17 L. G. R. 190; *Carpenter* v. *Finsbury Borough Council* (1920), 84 J. P. 107.

Fire-engines and brigades.

As to the powers of an urban authority to provide fire-engines, see s. 171 (2), the Parish Fire-engines Act, 1898, and the P. H. A., 1907, s. 90.

Rural authorities may obtain powers in this behalf by means of an urban powers order under s. 276, and independently of such powers, action may be taken parochially in *rural* parishes, by the parish council, lighting inspectors, or overseers, as the case may be, under one or other of the following enactments: the Lighting and Watching Act, 1833 (s. 44), the Poor Law Amendment Act, 1867 (s. 29), the L. G. A., 1894 (s. 6 (1) (c) (ii)), the Parish Fire-engines Act, 1898, and the P. H. A., 1907 (s. 90).

Failure to indicate position of plug.

(*c*) The defendant authority had placed a fire-plug in a road not repairable by them, and had put up a plate of the usual kind, "F. P. 22 ft."; the plate was some feet out of position with regard to the plug; but, although it did not indicate the correct line to the plug, a searcher following the line indicated would ordinarily have seen the plug. At the material time the plug was buried by a layer of earth or ashes, but this had not been done by or with the knowledge of the defendants. A fire broke out on the plaintiffs' premises, and, as the jury found, increased damage was done because the fire-brigade could not for some time find the plug in question. The jury found that the defendants were guilty of negligence in erecting a misleading plate:—*Held*, that the defendants were liable in damages as for an act of misfeasance (*Dawson* v. *Bingley U. D. C.*, [1911] 2 K. B. 149; 75 J. P. 289).

Note to Section 66. This section will be a sufficient justification, though the owner or occupier of the buildings or walls should object to the mark.

Agreements with universities.

67. In the Oxford or Cambridge district (*a*) the local authority may supply water to any hall college or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority.

(*a*) This section renders the demand of water rates from the occupiers of individual chambers unnecessary, but the agreement must be duly executed under seal by the local authority and the corporate body of the university, college or hall. See s. 342, *post*, as to Oxford.

Provisions for Protection of Water.

Penalty for causing water to be corrupted by gas washings

68. Any person (*a*) engaged in the manufacture of gas who (*b*) :

(1) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas ; or

(2) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours notice (*c*) from the local authority or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued (*d*) or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority (*e*) ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (*f*).

(*a*) This word, according to the definition in s. 4, *ante*, p. 6, includes any body of persons corporate or unincorporate.

Duty of gas manufacturer an absolute duty.

(*b*) A private Act incorporating a gas company, and empowering them to make the necessary works, provided (s. 160), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, etc., or place for water within the limits of the Act, any washing produced in making gas, or do any act to the water contained in any such stream, etc., or place for water, whereby the water therein should be fouled or corrupted, the company should forfeit for every such offence £200. Section 161 imposed an additional penalty of £20 per day for the continuance of such pollution more than twenty-four hours after notice. Section 165 made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence.

Note to Section 68.

They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked, and the washings produced in the making of gas escaped and percolating underground polluted the water in the plaintiff's well. The company then found on inquiry that mines had been worked by strangers under part of their land close up to the tank. The crack in the tank was caused by subsidence of the soil, owing, in all probability, to the mining operations:—*Held*, by the Exchequer Chamber, that the company were liable under s. 160 to the penalty of £200 for polluting the plaintiff's water by the gas washings (*Hipkins* v. *Birmingham and Staffordshire Gas Co.* (1861), 24 J. P. 438; 6 H. & N. 250).

When noxious matter percolated through the soil from gasworks so as to foul a well, such percolation was held to render a company liable under the similar provisions of 3 & 4 Will. 4, c. 90. A well which, on account of its having become contaminated, had been disused by the owners for several years, and had been covered over, was held to be still a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled with acceptance by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character and make it no longer a well, nor could any licence to pollute it be inferred from such a state of facts. *Quære, per* KEATING, J., whether a man could by deed give an irrevocable licence to pollute a well. A prescription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period (*Millington* v. *Griffiths and Others* (1874), 30 L. T. 65). In the above case it is assumed that a well is a "place for water."

As to the meaning of the word "causes," see *Moses* v. *Midland Rail. Co.* (1915), 79 J. P. 367; 113 L. T. 451, which was a decision under s. 5 of the Salmon Fishery Act, 1861.

Apart from statutory provision it appears that pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R.* v. *Medley and Others* (1834), 6 C. & P. 292, and *Herring* v. *Lincoln Corporation* (1920), 42 M. C. C. 41.

Similar statutory provisions.

It is to be observed that the Gasworks Clauses Act, 1847, s. 21, contains provisions similar to this section. Where, therefore, that Act is incorporated with a local Act, or where a local Act containing similar provisions is in force, proceedings may be taken either under this or the local Act by virtue of s. 340, *post*.

The Waterworks Clauses Act, 1847, s. 62, which is incorporated in this Act by s. 57, *ante*, p. 131, and is printed in App. I., *post*, Vol. II., contains provisions almost identical with this section, which is taken from 18 & 19 Vict. c. 121, ss. 23, 24, and extends the provisions of 11 & 12 Vict. c. 63, s. 80.

The W. Gas Company unexpectedly discharged a quantity of offensive liquid from their works into the sewers of the W. Corporation. The liquid passed through the sewage works on to the sewage farm and thence into a tributary of the Thames. The W. Corporation were convicted of unlawfully and wilfully suffering a large quantity of washing or other substance produced in the making of gas to flow or pass into a tributary of the Thames contrary to s. 92 of the Thames Conservancy Act, 1894. On an appeal it was held that it was not proved the appellants had "wilfully" suffered the deleterious matter to pass into the Thames, and the conviction was quashed (*High Wycombe Corporation* v. *Thames Conservators* (1898), 78 L. T. 463; 14 T. L. R. 358). Proceedings had already been taken by the conservators under the same Act against the W. Gas Company in respect of this occurrence. The company pleaded guilty and were fined.

(*c*) As to notices and their service, see ss. 266, 267, *post*.

Daily penalties

(*d*) Apparently this means after notice has been given to the offender, so that if no notice be given a penalty of £200 is recoverable; if notice be given, that sum and the additional sum from the time of the notice is recoverable.

(*e*) The same provisions in the Nuisances Removal Act, 1855, ss. 23—25, were held to supersede a clause in a local Act containing similar penalties (*Parry* v. *Croydon Gas and Coke Co.* (1864), 28 J. P. 86; 15 C. B. (N.S.) 568; but see s. 340, *post*. See also note (*b*), *supra*.

Note to Section 68.

(*f*) 11 & 12 Vict. c. 63, s. 80, contained provisions for examining the gas pipes which are omitted here, and it is very doubtful whether s. 305, *post*, will apply to this case.

Local authority may take proceedings to prevent pollution of streams.

69. Any local authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment bill in Chancery action or otherwise as they may deem advisable for the purpose of protecting any watercourse (*a*) within their jurisdiction from pollutions arising from sewage (*b*) either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

(*a*) Note that this is not applicable to all rivers and streams, but only to such streams as constitute "watercourses"; and it is presumed that they are not such as belong to the authority, seeing that the ordinary laws regarding property would enable an authority to take such proceedings in reference to their own property. To constitute a "watercourse" there must be water flowing in a channel between banks more or less defined (*per* TENTERDEN, L.C.J., in *R.* v. *Inhabitants of Oxfordshire* (1830), 1 B. & Ad. p. 301). It may be natural or artificial. See *Bowes* v. *Watson* (1879), 44 J. P. 364; 42 L. T. 27; *Smith* v. *Barnham* (1876), 1 Ex. D. 419; 40 J. P. 710; *Biscoe* v. *Drought* (1859), 11 Ir. C. L. R. 250; *Sutcliffe* v. *Booth* (1863), 32 L. J. Q. B. 136; 27 J. P. 613; *Remfry* v. *Surveyor-General of Natal*, [1896] A. C. 558. The line of a periodical "bourne flow" was held not to be a watercourse in *Pearce* v. *Croydon R. D. C.*, cited in note to s. 17 on p. 60, *ante*. See, also, as to a similar "flow," *Att.-Gen.* v. *Lewes Corporation*, cited on p. 27, *ante*. As to when a stream or watercourse may become a "sewer" see the last-mentioned case and other decisions in notes to s. 4, p. 26, *ante*.

(*b*) Pollution from manufacturing or other similar processes is not provided for by this section. See, however, the Rivers Pollution Prevention Acts, 1876 and 1893, in App. I., *post*, Vol. II., as to pollution by solid matters, sewage and manufacturing and mining pollutions, and the duties cast upon local authorities by those Acts.

As to the power of a county council to take proceedings to restrain the pollution of a stream, see the L. G. A., 1888, s. 14, *post*.

Power to close polluted wells, etc.

70. On the representation of any person to any local authority that within their district the water in any well tank or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man (*a*), is so polluted (*b*) as to be injurious to health, such authority may apply to a court of summary jurisdiction (*c*) for an order to remedy the same; and thereupon such court shall summon the owner or occupier (*d*) of the premises to which the well tank or cistern belongs, if it be private, and in the case of a public well tank cistern or pump, any person alleged in the application to be interested in the same (*e*), and may either dismiss the application, or may make an order directing the well tank cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water (*f*).

The court may, if they see fit, cause the water complained of to be

analysed at the cost of the local authority applying to them under this section (*g*). **Section 70.**

If the person on whom an order under this section is made fails to comply with the same, the court may on the application of the local authority authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner (*h*) from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses (*i*).

(*a*) These last words were new, and were inserted to include cases when the water is used for the manufacture of aerated or other drinks for human consumption. Water for manufactured drinks.

(*b*) The well or tank must be alleged to be polluted, not merely likely to be polluted even if this is practically certain. The section would therefore not meet the case of the opening of a burial ground in close proximity to a well. In such circumstances, if the well cannot be closed, it must be closely watched.

(*c*) See the definition, *ante*, p. 36.

(*d*) Apparently the court may select which party should be summoned, but the authority should lay their views before the court. As to the word *owner*, see the definition in s. 4, *ante*, p. 8. Persons to be summoned.

(*e*) These words are general and indefinite. Presumably the proper person will be a parish officer or some officer of the authority, as for the most part the well or other place will be vested in the authority under s. 64, *ante*, p. 139. It has sometimes been considered that persons were interested in a well because they were in the habit of taking water from it. But it is submitted that the interest here referred to is one of ownership. At all events, an order could not be made on such persons under this section.

(*f*) Very wide powers are granted to the court by these words. It may be prudent to allow any person to be affected (though not named in the application) to show cause against the granting of the order. See *Gill* v. *Bright* (1871), 41 L. J. M. C. 22 ; 36 J. P. 198 ; *R.* v. *Cheshire Lines Committee* (1873), L. R. 8 Q. B. 344 ; 37 J. P. 373, and cases cited in note (*e*) to s. 158, *post*, p. 356.

(*g*) 38 & 39 Vict. c. 63, and the amending Acts in App. I., *post*, which provide for the analysis of food and drugs, exclude the analysis of water. Hence any analysis of water must be made independently of those Acts. It is to be noticed also that the power of the court to order an analysis is limited to cases in which the local authority are the applicants for the order. Analysis of water.

In sending samples of water to an analyst it is customary for the local authority to furnish information as to the source so as to assist the analyst in forming an opinion. If, however, the authority require the results of an analysis only, leaving the question of the quality of the water and its suitability for consumption to be determined by their M. O. H. they are at liberty to ask for an analysis only.

(*h*) See s. 251, *post*.

(*i*) See s. 229, *post*.

REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES.

Occupation of Cellar Dwellings (*a*).

71. It shall not be lawful to let (*b*) or occupy (*c*) or suffer to be occupied separately as a dwelling any cellar (including for the purposes of this Act in that expression any vault or underground room) built or Prohibition of occupying cellar dwellings.

Section 71. rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act (*d*).

(*a*) The Housing, Town Planning, etc. Act, 1909, s. 17 (7), *post*, Vol. II., prohibits in many cases the habitual use as a sleeping place of a room, the surface of the floor of which is more than three feet below street level.

(*b*) The infringement of this section is an offence: for the penalty, see s. 73, *post*, p. 151. In *Gowen* v. *Sedgwick* (1904), 68 J. P. 484, it was held that an owner of a new house, who had allowed it to be occupied by a caretaker rent free, could not be convicted of having "let" the house in contravention of a byelaw.

(*c*) As to what amounts to occupation "as a dwelling," see s. 74, *post*, p. 151.

(*d*) But for these words the repeal of 11 & 12 Vict. c. 63, s. 67, would operate so as to legalise the letting or occupation of cellars built since the passing of that Act. The effect is that no cellar built or rebuilt since 1848 can be lawfully occupied, unless it was let or occupied before that year, and not even in such a case unless the requirements of the next section are complied with.

Existing cellar dwellings only to be let or occupied on certain conditions.

72. It shall not be lawful (*a*) to let or occupy (*b*) or suffer to be occupied separately as a dwelling, any cellar whatsoever (*c*), unless the following requisitions are complied with; (that is to say,)

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a water-closet earth-closet or privy and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act (*d*); and

Unless the cellar has a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (*e*) (except in the case of an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions not being less than four superficial feet in area clear of the sash frame).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over across or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over across or opposite to any such external window.

(*a*) The penalty for infringement is imposed by the next section. See also note (*a*) to the preceding section. **Note to Section 72.**

(*b*) As to what amounts to occupation "as a dwelling," see s. 74, *infra*.

(*c*) This section deals with cellars which were let or occupied in 1848, because by the last section, which re-enacts 11 & 12 Vict. c. 63, s. 67, no cellars can have begun to be lawfully occupied as dwellings subsequent to that Act.

(*d*) See s. 35, *ante*, p. 96.

(*e*) See the definition of *surveyor* in s. 4, *ante*, p. 7.

73. Any person who lets occupies (*a*) or knowingly suffers to be occupied for hire or rent (*b*), any cellar contrary to the provisions of this Act shall be liable for every such offence to a penalty (*c*) not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing (*d*) from the local authority in this behalf. Penalty on persons offending against enactment.

(*a*) See the next section.

(*b*) The words for *hire or rent* do not occur in the two previous sections, which simply make it unlawful to let, occupy, or suffer to be occupied as a dwelling any cellar, etc. There may, therefore, be a contravention of ss. 71 or 72, to which this section does not apply. If so, it would appear that the only remedy would be by indictment for disobedience of a statute, which is a misdemeanor at common law (Archbold's Criminal Pleading, 24th ed., pp. 3—5; and see *R.* v. *Walker*, *ante*, p. 108).

(*c*) As to the recovery of this penalty, see s. 251, *post*.

(*d*) See as to the authentication and service of notices, ss. 266, 267, *post*. Care must be taken to serve the notices on the several parties, the lessor and the occupier, according as the proceedings are taken. A form of notice will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 312.

74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act. Definition of occupying as a dwelling.

75. Where two convictions against the provisions of any Act (*a*) relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same) a court of summary jurisdiction (*b*) may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section (*c*). Power to close cellars in case of two convictions.

(*a*) These words will, doubtless, apply to local Acts which contain provisions to prevent the occupation of cellars as well as to convictions under this Act.

(*b*) See the definition, *ante*, p. 36.

(*c*) There is no provision for enforcing the order, but the disobedience to it would probably be an indictable misdemeanor. See note (*b*) to s. 73, *supra*. See also the Housing, Town Planning, etc. Act, 1909, s. 17 (7), *post*, Vol. II.

Common Lodging-houses (*a*).

76. Every local authority shall (*b*) keep a register in which shall be entered the names and residences of the keepers (*c*) of all common lodging-houses within the district of such authority, and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein. Registers of common lodging-houses to be kept.

Section 76.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded; and a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

Forms for use under this and the following sections will be found in the Encyclopædia of Forms and Precedents, Vol. X., pp. 317—321.

"Common lodging-house."

(*a*) The Common Lodging-houses Act, 1851 and 1853, were the statutes which regulated common lodging-houses, but they are repealed by this Act, except so far as relates to the Metropolitan Police District. (See Schedule V., *post*.) Their provisions are, however, virtually re-enacted, and any definition or decisions relating to those provisions will doubtless be regarded when construing the Public Health Act. When the Acts of 1851 and 1853 were passed, there was no statutory definition of the term "common lodging-house," although in the Towns Improvement Clauses Act, 1847, which contains clauses as to the regulation of common lodging-houses, there was, in s. 116, this definition of a "public lodging-house": "Every house shall be deemed a public lodging-house within the meaning of this Act in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week." The General Board of Health, therefore, in 1853, took the opinion of COCKBURN, L.C.J., and Lord HATHERLEY, the then law officers of the Crown, who advised thus: "It may be difficult to give a precise definition of the term 'common lodging-house'; but, looking to the preamble and general provisions of the Act (14 & 15 Vict. c. 28), it appears to us to have reference to that class of lodging-house in which persons of the poorer class are received for short periods, and, *though strangers to one another*, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, publichouses, or lodgings let to the upper and middle classes." They afterwards explained the passage as to strangers thus: "Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household." And they added that, in their opinion, "the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question." In the memorandum prefixed to the model byelaws issued by the L. G. B. under s. 80, *post*, p. 156, it is stated that so far as the foregoing definition of a common lodging-house rests upon the basis of the habitation of a common room by lodgers who are strangers to one another in the sense of not being members of one family or household, it may be inferred that this characteristic equally distinguishes the common lodging-houses to which this Act applies; and that such an inference receives support from the terms of s. 87, *post*, p. 160.

An interpretation of the term "common lodging-house" is contained in s. 89, *post*, p. 161, but it is not exhaustive, and until the year 1905 it was generally believed that there was no statutory definition of the term "common lodging-house"; but in that year it was discovered that such a definition existed in s. 3 of the Common Lodging-houses Act (Ireland), 1860, which runs thus: "The term 'common lodging-house' shall mean a house in which persons are harboured or lodged *for hire* for a single night, or for less than a week at a time, or any part of which is let for any term less than a week." This Irish Act was subsequently repealed by the Irish Public Health Act, 1878, but the definition may still be looked at for the purpose of construing the English Common Lodging-houses Acts, 1851 and 1853. See *Parker* v. *Talbot*, *infra*. The existence of the definition clause was discovered by the Court of Appeal during the argument of *Parker* v. *Talbot*, [1905] 2 Ch. 643; 70 J. P. 43. In this case it was accordingly held that a lodging-house in which persons of the very poorest class are received without payment of any kind, direct or indirect, the inmates being treated and dealt with in a manner similar to that in which the habitual frequenters of common lodging-houses are treated, was not a common lodging-house within the Common Lodging-houses Acts, 1851 and 1853. An earlier decision of the Divisional Court to the contrary effect (*Gilbert* v. *Jones*, [1905] 2 K. B. 691; 69 J. P. 392) was overruled.

"Statutory definition."

Payment necessary.

Note to Section 76.

In *Langdon* v. *Broadbent* (1877), 42 J. P. 56; 37 L. T. 434, a lodging-house where hawkers and persons of a similar class were received, staying for various periods, having their meals in one room, and paying sixpence a night, was held to be a common lodging-house within this section (s. 76). GROVE, J., said: "Each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. The case does not find whether the lodgers occupied separate sleeping apartments. But I do not think it is necessary to show that the lodgers are all herded together in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And see *Halligan* v. *Ganly*; *Logsdon* v. *Trotter*, *infra*. It has now been definitely decided (under the London County Council (General Powers) Act, 1902) that a house in which there is no community of eating or sleeping accommodation is not a common lodging-house, but rather a "house let in lodgings" (*London C. C.* v. *Hankins*, [1914] 1 K. B. 490; 78 J. P. 137).

Common accommodation necessary.

B. opened a lodging-house for the reception of male lodgers, who slept in one common room capable of accommodating 100 persons. The lodgers were charged, at the discretion of the manager, a sum not exceeding fourpence per night for bed, supper, and breakfast; the house was, however, maintained, not for the purpose of gain, but for the accommodation of the poorest class of persons only, partly with a charitable and partly with a religious object. The house had not been inspected or approved by the officer of the local authority, nor was it registered. B. having been convicted for keeping a common lodging-house in contravention of 16 & 17 Vict. c. 41, s. 3, it was held that the house, being maintained as a charitable institution and not for purposes of gain, was not a common lodging-house within the meaning of the Act, and that the conviction could not be supported (*Booth* v. *Ferrett* (1890), 25 Q. B. D. 87; 55 J. P. 7). But this decision must now be regarded as overruled. A common lodging-house is that class of lodging-house in which persons of the poorer class are received for short periods and, although strangers to one another, are allowed to inhabit one common room, and the fact that such a house is not carried on as a business for the sake of profit, but as a humane or charitable enterprise, does not take it out of the measure of sanitary protection provided by the Acts, or prevent it being a common lodging-house within their meaning. The question is not with what object, or from what motive, the house is carried on, but whether the house is such, and is so carried on, as to be within the provisions of the Acts (*Logsdon* v. *Booth*, [1900] 1 Q. B. 401; 64 J. P. 165). This decision remains unaffected by the decision in *Parker* v. *Talbot*, *supra*, as was pointed out by COZENS-HARDY, L.J., [1905] 2 Ch., at p. 653.

Charitable institutions included.

The fact that separate sleeping accommodation in cubicles, the other rooms being used in common, is afforded to lodgers, at charges above the ordinary rate paid in common lodging-houses, at an institution promoted by benevolent persons for the benefit of a class of poor persons superior to the "dosser" class, does not render such institution any the less a "common lodging-house" or exempt it from registration and inspection (*Logsdon* v. *Trotter*, [1900] 1 Q. B. 617; 64 J. P. 421).

The Merchant Shipping Act, 1894, s. 214, provides that the sanitary authority of any seaport town may make byelaws relating to seamen's lodging-houses. See the section set out in App. I., *post*, Vol. II.

Other statutory provisions as to lodging-houses.

Where the sections as to common lodging-houses (ss. 69—75, constituting Part V. of the Act) contained in the P. H. A., 1907, have been applied to any district the scope of the code upon this subject contained in the Act of 1875 will be considerably enlarged. The Act of 1907 is set out, *post*, but the sections relating to common lodging-houses are also noticed in their appropriate places in the notes under this and the following sections. Attention should, however, here be called to the provision contained in s. 75 (1) of the 1907 Act, that, "At a time not less than one month before the commencement of this Part of this Act the local authority shall give notice of the fact to the keeper of every common lodging-house in their district."

In London, the Common Lodging-houses Acts, 1851 and 1853, are still in force, and additional provisions as to common lodging-houses (*inter alia*, as to licensing

Note to Section 76.

keepers thereof), are contained in the London County Council (General Powers) Acts, 1902, 1904, and 1907.

What amounts to registration.

(*b*) Note that this provision is imperative. The keeper of a common lodging-house, having fulfilled the necessary preliminaries under s. 78, applied to be registered under this section, and the authority passed a resolution that his house should be registered. The clerk did not carry out this resolution, and neither the keeper nor his house was formally registered. Eight months afterwards the authority resolved that his house should not be registered, and two months later they prosecuted him for keeping a common lodging-house without being registered. It was held that for the purposes of the Act the resolution of the authority constituted registration and that the justices were right in refusing to convict (*Coles* v. *Fibbens* (1884), 49 J. P. 308 ; 52 L. T. 358).

When once a house or keeper has been registered, *semble*, express statutory authority must be shown for cancelling such registration : see *Blake* v. *Kelly*, in notes to s. 88, *post*, p. 160.

"Keepers."

(*c*) With regard to the meaning of the word *keeper*, the law officers already referred to in note (*a*) advised that where a person neither resides in the house nor exercises any control over its management, but simply receives the rent, he cannot be considered the *keeper ;* but where the owner, though not resident in the house, either in person or through an agent, colourably or otherwise, exercises control over its management, they had no doubt that he should be considered the keeper. *Halligan* v. *Ganly* (1868), 19 L. T. 268, a decision of the Common Pleas in Ireland, which appears at first sight to be contrary to this opinion, will be found to turn entirely on the definitions of *public lodging-house* and *keeper* in a local Act (27 & 28 Vict. c. cccv. s. 4). It is not, therefore, an authority on the interpretation of the above section.

"Deputy keepers."

Where s. 71 of the P. H. A., 1907, has been applied to any district, a duty with reference to deputy lodging-house keepers is imposed. By it, "(1) The local authority shall keep a register for the purposes of this section, and shall enter therein the name of any person whose name is submitted to them by a common lodging-house keeper as his deputy, and who is approved by them for the purpose. (2) The local authority may register more than one deputy for any common lodging-house keeper. (3) The local authority, if at any time they are of opinion that any person registered as a deputy of a common lodging-house keeper is not a fit person for the purpose, may cancel the registration."

All common lodging-houses to be registered, and to be kept only by registered keepers.

77. A person shall not (*a*) keep a common lodging-house or receive a lodger therein unless the house is registered in accordance with the provisions of this Act ; nor unless his name as the keeper thereof is entered in the register kept under this Act : Provided that when the person so registered dies, his widow or any member of his family (*b*) may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

(*a*) Section 86, *post*, p. 159, imposes a penalty upon a person who receives a lodger in a common lodging-house which is not registered ; but, apparently, there is no provision under which a person can be summarily convicted for keeping or receiving lodgers in a registered house without being registered as its keeper : *semble*, he must be proceeded against, if at all, by indictment for the common law misdemeanor of infringing a statutory provision. As to registering "deputy keepers," see note (*c*) under s. 76.

(*b*) This is a word of wide extent and difficult to define. It will, doubtless, be best interpreted by the circumstances of each case. There is no authority for confining it to the person's children. See s. 87, *post*, p. 160.

Local authority

78. A house shall not be registered as a common lodging-house until it has been inspected and approved (*a*) for the purpose by some officer of

the local authority (*b*) ; and the local authority may refuse (*c*) to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value (*d*) of six pounds or upwards. **Section 78.** may refuse to register houses.

(*a*) From the Memorandum of the L. G. B., quoted on p. 152, *ante*, the following observations are taken: To the thoroughness of this inspection much importance should be attached. It is essential that in all structural details the fitness of the premises should be carefully ascertained before the house is placed on the register. The rules which should guide the inspecting officer in his examination of the premises may be thus briefly indicated: The house should (1) possess the conditions of wholesomeness needed for dwelling-houses in general; and (2) it should have arrangements fitting it for its special purpose of receiving a given number of lodgers. Rules for inspection.

(1) The house should be dry in its foundations, and have proper drainage, guttering, and spouting, with properly laid and substantial paving to any area or yard abutting on it. Its drains should have their connections properly made, and they should be trapped when necessary, and adequately ventilated. Except the soil pipe from a properly trapped water-closet, there should be no direct communication of the drains with the interior of the house. All waste pipes from sinks, basins, and cisterns should discharge in the open air over gullies outside the house. The soil pipe should always be efficiently ventilated. The closets and privies and the refuse receptacles of the house should be in proper situations, of proper construction, and adapted to any scavenging arrangements that may be in force in the district. The house should have a water supply of good quality, and, if the water be stored in cisterns, they should be conveniently placed, and of proper construction to prevent any fouling of the water. The walls, roof, and floors of the house should be in good repair. Inside walls should not be papered. The rooms and staircases should possess the means of complete ventilation, windows being of adequate size, able to be opened to their full extent, or if sash windows, both at top and bottom. Any room proposed for registration that has not a chimney should be furnished with a special ventilating opening or shaft, but a room not having a window to the outer air, even if it have special means of ventilation, can seldom be proper for registration.

(2) The numbers for which the house and each sleeping room may be registered will depend partly upon the dimensions of the rooms and their facilities for ventilation, and partly upon the amount of accommodation of other kinds. In rooms of ordinary construction to be used for sleeping, where there are the usual means of ventilation by windows and chimneys, about 300 cubic feet will be a proper standard of space to secure to each person; but in many rooms it will be right to appoint a larger space, and this can only be determined on inspection of the particular room. The house should possess kitchen and day-room accommodation apart from its bedrooms, and the sufficiency of this will have to be attended to. Rooms that are partially underground may not be improper for day-rooms, but should not be registered for use as bedrooms. The amount of water supply, closet, or privy accommodation, and the provision of refuse receptacles should be proportionate to the numbers for which the house is to be registered. If the water is not supplied from works with constant service, a quantity should be secured for daily use on a scale, per registered inmate, of not less than ten gallons a day where there are water-closets, or five gallons a day where there are dry closets. For every twenty registered lodgers a separate closet or privy should be required. The washing accommodation should, wherever practicable, be in a special place and not in the bedroom, and the basins for personal washing should be fixed, and have water taps and discharge pipes connected with them.

(*b*) The keeper should give notice to the authority and request them to send the proper officer to inspect. That officer is to approve of the house when he has inspected it. It is to be observed that, if the house is inspected and approved, Effect of approval.

Note to Section 78.

the authority have no discretion enabling them to refuse to register. "The Act imposes an obligation on the local authority to complete the registration of a common lodging-house after they once pass over the opportunity for refusal provided by the 78th section" (*per* MATHEW, J., in *Coles* v. *Fibbens*, *ante*, p. 154). If the officer refuses to approve, the authority are not bound to hear the applicant in support of his application (*Ex parte Kavanagh* (1894), 10 T. L. R. 533).

Provisions of the P. H. A., 1907, s. 69.

(*c*) Where s. 69 of the P. H. A., 1907, has been applied to any district, a wider discretion as to registration is given, and new registrations are limited in duration. By it: "(1) The local authority may, at their discretion, refuse to register any person as a common lodging-house keeper, unless they are satisfied of his character and of his fitness for the position. (2) The registration of a person as a common lodging-house keeper shall, if that person is newly registered after the commencement of this section, remain in force only for such time not exceeding one year as may be fixed by the local authority, but may be renewed from time to time by the local authority."

The above section is contained in Part V. of the Act of 1907, and by s. 75 (2): "On and after the commencement of this Part of this Act section seventy-eight from the words 'and the local authority may' to the end of the section, and section eighty-eight of the Public Health Act, 1875, shall be repealed as far as relates to the district."

(*d*) Probably this means *net annual value*, which is defined in s. 4, *ante*, p. 15.

Notice of registration to be affixed to houses.

79. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words, "Registered Common Lodging-house," in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

See as to the recovery of this penalty, s. 251, *post*.

Where s. 72 of the P. H. A., 1907, has been applied in any district the court may also cancel the registration of the keeper.

Byelaws to be made by local authority.

80. Every local authority shall from time to time make byelaws (*a*)—

(1) For fixing and from time to time varying (*b*) the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and

(2) For promoting cleanliness and ventilation in such houses; and

(3) For the giving of notices and the taking precautions (*c*) in the case of any infectious disease; and

(4) Generally for the well ordering of such houses (*d*).

Byelaws.

(*a*) As to the making of byelaws, see s. 182, *post*; as to their confirmation, s. 184, *post*; and as to their enforcement, s. 251, *post*. Model byelaws are issued by the M. of H. for the use of sanitary authorities under this section; and it will be convenient if these are adopted with as little variation as the circumstances of each case will permit. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 57. For form of resolution adopting byelaws, see Encyclopædia of Forms and Precedents, Vol. X., p. 322, and see also, at pp. 324, 325, forms relating to the fixing of maximum number of lodgers.

The Merchant Shipping Act, 1894, provides that the sanitary authority within

whose district any seaport town is situate may, with the approval of the President of the Board of Trade, from time to time make, revoke, alter, and amend byelaws relating to seamen's lodging-houses in such town. See s. 214 thereof in App. I., *post*, Vol. II.

Note to Section 80.

(*b*) The provision for *varying* the number was new. Lord CAIRNS advised that when the number had been fixed it could not be varied under the previous Acts.

(*c*) This was new. See s. 84, *post*, p. 158. See also ss. 120—130, *post*, pp. 227—237, as to infectious diseases, especially s. 128, which imposes a penalty on persons who let houses or rooms in which infected persons have been lodging.

(*d*) These are very general words, and apply not only to the state of the house, but, as it seems, to the conduct of the inmates, so that any disorder in a house may be prevented. The model byelaws do not, however, contain any provisions of this nature.

Provisions of the P. H. A., 1907, s. 70.

Where s. 70 of the P. H. A., 1907, has been applied to any district, an obligation is imposed on the keeper or deputy-keeper of a lodging-house to manage and exercise supervision. By it: "(1) Either the keeper of a common lodging-house or a deputy registered under this Act shall manage and control the lodging-house and exercise supervision over those using it, and either the keeper or the deputy so registered shall be and remain at the lodging-house between the hours of nine in the evening and six in the morning of the following day. (2) If any provision of this section is not complied with in the case of any common lodging-house, the keeper of the house shall, unless he shows to the court that there was a reasonable excuse for the non-compliance, be liable in respect of each offence to a penalty not exceeding forty shillings, and to a daily penalty not exceeding twenty shillings."

Power of local authority to require supply of water to houses.

81. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate (*a*), the local authority may by notice in writing (*b*) require the owner (*c*) or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose (*d*); and if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Provisions of the P. H. A., 1907, s. 74, as to sanitary conveniences.

Where s. 74 of the P. H. A., 1907, has been applied to any district, the provision of proper sanitary conveniences may be enforced. That section provides as follows:

"(1) Every common lodging-house, whether registered before or after the commencement of this section, shall be provided—

"(a) With sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in that house, and also, where persons of both sexes are received in the common lodging-house, with proper separate accommodation for persons of each sex; and

"(b) With a water supply laid on sufficient for flushing any water-closets or urinals which are used in the house.

"(2) If it appears to the local authority that, in the case of any common lodging-house, default is made in any respect in complying with the provisions of this section, the local authority may, by notice in writing specifying the default, require the keeper of the common lodging-house to remedy the default.

"(3) If within twenty-eight days of the notice being served the default is not remedied to the satisfaction of the local authority, they may themselves do the work required to be done, and may recover in a summary manner from the keeper of the common lodging-house the expenses incurred by them in so doing, or may by order declare these expenses to be private improvement expenses."

(*a*) It appears that this is a matter for the determination of the local authority. See the general provisions for the supply of water, s. 62, *ante*, p. 137; and the Public Health (Water) Act, 1878, *post*.

Note to Section 81.

(*b*) See as to such notice and its service, ss. 266, 267. A form of notice is given in the Encyclopædia of Forms and Precedents, Vol. X., at p. 327.

(*c*) See definition in s. 4, *ante*, p. 8. As the notice may be given to the owner *or* keeper it will be right, if the notice be given to the former, that the latter should also receive information; otherwise his name may be removed from the register without his knowledge. The better plan will be to serve the notice on both.

(*d*) Query, whether these words enable the authority to specify the works to be done. See the cases on similar words in the notes to s. 94, *post*, p. 181.

Limewashing of houses.

82. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings.

This penalty will be over and above what he may be required to do under any byelaw. As to the recovery of this penalty, see s. 251, *post*.

Power to order reports from keepers of houses receiving vagrants.

83. The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority.

For a form of notice to be given by the authority and also a form of report, see the Encyclopædia of Forms and Precedents, Vol. X., at pp. 328, 329.

If the local authority act upon this section they must specify for what period the report is to be made. The mode of transmission is not stated, but transmission by post will probably be sufficient. Failure to make this report renders the keeper liable to a penalty under s. 86, *post*, p. 159.

The Prevention of Crimes Act, 1871, s. 10, contains provisions as to harbouring thieves or reputed thieves in lodging-houses, or suffering them to meet or assemble therein. Lodging-houses may be searched for idle and disorderly persons, etc., on a warrant under the Vagrancy Act, 1824, s. 13.

Keepers to give notice of fever, etc. therein.

84. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease (*a*), give immediate notice (*b*) thereof to the medical officer of health (*c*) of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated (*d*).

(*a*) See the provisions of ss. 120—130, *post*, pp. 227—237, as to infectious diseases. The byelaws under s. 80, *ante*, p. 156, may contain provisions similar in effect to this section.

See also the provisions of the Infectious Disease (Notification) Act, 1889, *post*.

(*b*) This statute does not require notice in writing, and in cases in which it is not superseded by the Infectious Disease (Notification) Act, 1889, a verbal notice may be held to be sufficient, but it is most desirable that it should be in writing. For form of notice, see Encyclopædia of Forms and Precedents, Vol. X., at p. 326. The model byelaws require a written notice to be given (No. 18) (Mackenzie and Handford's Model Byelaws, Vol. I., p. 68). The duty to give notice is absolute, and

want of personal knowledge will not excuse the keeper if his deputy was aware of the case (*Logsdon* v. *Holland* (1898), 14 T. L. R. 449 ; 42 Sol. J. 523). **Note to Section 84.**

(*c*) The Common Lodging-Houses Act, 1851, s. 11, required the notice to be given to the medical officer of the union, but now it is to be given to the medical officer of health of the authority appointed under s. 189 or s. 190, *post*.

(*d*) Section 124, *post*, p. 231, provides for the removal of the sick person to a hospital in certain cases.

See s. 86, *infra*, as to the penalty of non-compliance with the provisions of this section. In places where the P. H. A., 1890, is in operation the keeper will be liable to a penalty under s. 32 of that Act. See that section and the notes thereto, *post*.

85. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer (*a*) of the local authority, give him free access to such house or any part thereof ; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds (*b*). As to inspection.

(*a*) The section does not require such officer to produce any specific authority for his demand of inspection, thus varying 11 & 12 Vict. c. 63, s. 66. Moreover, the limitation of the hours of admission therein specified is omitted.

The keeper of a common lodging-house, on access to the house being demanded by two officers of a local authority, refused access (1) to a room which opened off a licensed room and could only be entered through it (this room had not been observed when the premises were inspected with a view to the licence being granted, and was not itself licensed) ; (2) to two rooms which were licensed, but which he had shut off entirely from the rest of the house, which had a separate entrance to the street, and which, after giving notice to the local authority that he had ceased to use them as part of the lodging-house, he had let to a monthly tenant :—*Held*, that in refusing access to the first-mentioned room he had contravened the statute, but otherwise in regard to the other two rooms (*Gunn* v. *Cadenhead* (1888), 15 Ct. of Sess. Cas., 4th series (J. C.) 57).

(*b*) See as to the recovery of this penalty, s. 251, *post*.

86. Any keeper of a common lodging-house who— Offences by keepers of houses.

(1) Receives any lodger in such house without the same being registered under this Act (*a*) ; or

(2) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act (*b*), of the persons resorting to such house ; or

(3) Fails to give the notice required by this Act where any person has been confined to his bed in such house by fever or other infectious disease (*c*),

shall be liable to a penalty (*d*) not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day during which the offence continues (*e*).

(*a*) See s. 77, *ante*, p. 154. Possibly registration under previous sanitary Acts may suffice, but it would be advisable to register again under this Act. As to what amounts to registration, see *Coles* v. *Fibbens*, *ante*, p. 154. Where s. 73 of the P. H. A., 1907, has been applied to any district, it dispels any doubt as to whether an unregistered keeper is liable to penalties under this section.

(*b*) See s. 83, *ante*, p. 158.

Note to Section 86.

(*c*) See s. 84, *ante*, p. 158. See also the Infectious Disease (Notification) Act, 1889, and the P. H. A., 1890, *post*. The last-mentioned Act, by s. 32 (where it is in force), imposes a penalty of forty shillings and a daily penalty of five shillings if the keeper of a lodging-house fails to give notice under s. 84, *ante*, p. 158, even when the person suffering from fever, etc. has not been "confined to his bed."

(*d*) See as to the recovery of this penalty, s. 251, *post*.

(*e*) There is no reference here to breach of the byelaws, as this is provided for in ss. 183, 251, *post*. The *continuing* here, it is presumed, must refer to offences against sub-ss. (2), (3).

Evidence as to "family" in proceedings.

87. In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same family (*a*), the burden of proving such allegation shall lie on the person making it.

(*a*) It does not appear why the allegation should be made. The corresponding s. 41 of the Sanitary Act, 1866, was applicable to prosecutions for overcrowding, but no such mischief is provided for in lodging-houses specially. It may be material, however, with reference to the question whether a house is a lodging-house or not: see s. 76, note (*a*), *ante*, p. 152. It may also be material when considering an alleged infringement of a byelaw whereby provision is made for the separation of the sexes, where the family is young and consists of both sexes.

It may be doubtful what is meant by the word *family*. See s. 77, *ante*, p. 154, and s. 91, *post*, p. 165, where the word occurs again.

Conviction for third offence to disqualify persons from keeping common lodging-houses.

88. Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act (*a*) relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous licence in writing of the local authority, which licence the local authority may withhold or grant on such terms and conditions as they think fit.

(*a*) It is very doubtful whether convictions under previous Acts can be brought under the purview of this section. The section is penal, and will probably be construed strictly, in accordance with the general rule for the interpretation of penal statutes.

Forms of licence and of application for licence under s. 88, *supra*, will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 332.

As to the punishment of an unregistered person who keeps a common lodging-house, see notes to s. 77, *ante*, p. 154.

Section 72 of the P. H. A., 1907, provides that: "Where the keeper of a common lodging-house is convicted of any offence against any provision of the Public Health Acts or this Act relating to common lodging-houses, or of any byelaw made thereunder, the court before whom he is convicted may cancel his registration as a common lodging-house keeper, and he shall cease to be registered accordingly." But this section will only be operative in those districts in which it is applied by an Order of the M. of H. In any district in which Part V. of the Act of 1907 (which includes s. 72, *supra*) is applied, s. 88 of the Act of 1875 will be repealed. See s. 75 (2) of the Act of 1907.

K. was duly entered in the register of the B. authority as keeper of a common lodging-house. Two months later the inspector reported that it was kept as a

house of bad repute, and the health committee, by resolution, purported to cancel K.'s registration, and ordered him to clear out his lodgers in a week. On his refusal he was charged with keeping the house without being registered:—*Held*, the justices were right in dismissing the information, as there was no power to cancel the registration except for the reasons set forth in the statute (*Blake* v. *Kelly* (1887), 52 J. P. 263). **Note to Section 88.**

89. For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house. Interpretation of "common lodging-house."

It is difficult to say who is the keeper of the lodging-house in this case, whether the person who is the landlord or tenant of the whole house or the tenant of that part which is let and is so appropriated to the use of lodgers.

See the observations as to the difference in the meaning of the words "includes" and "means," p. 6, *ante*, and see the note on s. 76, *ante*, p. 152, as to the meaning of the expression "common lodging-house."

Byelaws as to Houses let in Lodgings (*a*).

90. *The Local Government Board may, if they think fit, by notice published in the London Gazette, declare the following enactment to be in force within the district or any part of the district of any local authority, and from and after the publication of such notice* such authority (*b*) shall be empowered to make byelaws (*c*) for the following matters; (that is to say,) Power of local authority to make byelaws as to houses let in lodgings.

(1) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family (*d*), and for the separation of the sexes in a house so let or occupied:

(2) For the registration of houses so let or occupied:

(3) For the inspection of such houses:

(4) For enforcing drainage and the provision of privy accommodation for such houses (*e*), and for promoting cleanliness and ventilation in such houses:

(5) For the cleansing and lime-washing at stated times (*f*) of the premises, and for the paving of the courts and courtyards thereof:

(6) For the giving of notices and the taking of precautions in case of any infectious disease (*g*).

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses (*h*).

(*a*) The scope of byelaws made under this section has been enlarged by s. 26 of the Housing, Town Planning, etc. Act, 1919, which see *post*, Vol. II. In many decisions a distinction has been drawn between houses which are let in separate tenements, the landlord retaining no control over the house; and houses in which, though some or all of the rooms are let, the landlord resides personally or by an agent, and exercises some control. The tenants of the tenements in the former case were held not to be lodgers within the meaning of the Registration Acts in *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195; 45 J. P. 847; *Ancketill* v. *Baylis* (1882), 10 Q. B. D. 577; 47 J. P. 356. These decisions appear to be of general application, and if so, they limit the number of houses to which this section applies. In *Bradley* v. *Baylis*, "Lodgers" and "lodgings."

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supra, JESSEL, M.R., made the following observations: "First of all, take the case of a *lodger*. It seems to me, as to unfurnished lodgings (and I will only deal with unfurnished lodgings, as it is the only class of cases with reference to which questions are likely to arise), where the owner of the house does not let the whole of it, but retains a part of his own residence and resides there, and when he does not let out the passages, staircase, and outer door, but gives to the inmates merely a right of ingress and egress, and retains to himself the general control, with the right of interfering—I do not mean an actual interference, but a right to interfere, a right to turn out trespassers, and so on—there I consider such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a *lodger*. That is one extreme case. Now, I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership, for the term demised, and retains no control over the house; there, in my opinion, the inmates are *occupying tenants*, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door? I think not. Does it make any difference that the landlord does not reside there personally, but has resident servants who occupy on his behalf part of the house? I think not. I think that the inmates are still *lodgers*. Does it make any difference that the landlord does or does not repair? I think not; they are still *lodgers*."

When rooms in a house are let out to separate occupiers the mere fact that the landlord resides in a separate set of rooms in the house does not of itself convert such occupiers from inhabitant occupiers into lodgers. But such occupiers are merely lodgers when the resident landlord has a right of control over their rooms (*Kent* v. *Fittall*, [1906] 1 K. B. 60; 69 J. P. 428). See also *Phillips* v. *Henson* (1877), 3 C. P. D. 26; 42 J. P. 137; *Morton* v. *Palmer* (1882), 9 Q. B. D. 89; 46 J. P. 150; *Ness* v. *Stephenson* (1882), 9 Q. B. D. 245; 47 J. P. 134; *Douglas* v. *Smith*, [1907] 2 K. B. 568; 71 J. P. 433; *R.* v. *Bell* (1907), 71 J. P. 542; 24 T. L. R. 66; *Kent* v. *Fittall* (No. 3), [1909] 1 K. B. 215; 73 J. P. 33; *Kent* v. *Fittall* (No. 4), [1911] 2 K. B. 1102; 75 J. P. 378; *Astell* v. *Barrett* (1911), 75 J. P. 225; 103 L. T. 905; *Crow* v. *Hilleary*, [1913] 1 K. B. 385; 77 J. P. 164; *McBride* v. *Bryans*, [1908] 2 I. R. 329; *Gregory* v. *Traquair*, [1912] S. C. 637; *Steele* v. *Mahon*, [1910] 2 I. R. 207.

Kent v. *Fittall* (No. 4), *supra*, was distinguished in *Smith* v. *Newman*, [1912] 1 K. B. 162; 76 J. P. 25, and followed in *Havercroft* v. *Dewey* (1913), 77 J. P. 115; 108 L. T. 296.

In *Ness* v. *Stephenson*, *supra*, it was held that if the landlord, reserving a room in a house, lets the rest of it to a person, but retains such control and dominion over it as is usually retained by masters of houses let in lodgings, the relation of landlord and lodger may exist between the parties for the purposes of such an Act as the Lodgers' Goods Protection Act, 1871 (see now the Law of Distress Amendment Act, 1908), although the lodger has the right of exclusively occupying the greater part of the premises and has separate and uncontrolled power of ingress and egress, and neither the landlord nor his agent sleeps or resides in the house and his lodger acts as caretaker of the part reserved; and that the existence of the relationship of landlord and lodger is a question of fact. In a later case decided with reference to the same Act, the appellant occupied the first floor and basement of premises at a yearly rent, carrying on the business of a publisher there, but sleeping and residing elsewhere. He had no key of the outer door, which was under the control of his immediate landlord, who admitted him every morning. It was held that he was not a lodger. A lodger in the popular sense of the word means one who sleeps on the premises (*Heawood* v. *Bone* (1884), 13 Q. B. D. 179; 48 J. P. 710).

A byelaw made under this section required certain particulars to be furnished to the authority by the occupier of houses let in lodgings or occupied by members

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of more than one family. On a summons under this byelaw, it was proved that B. was the tenant of a house, sub-letting unfurnished rooms to one person and occupying the rest of the house herself. It was held that the house was a "lodging-house" within the meaning of the byelaw and that there was nothing unreasonable in a byelaw applying to such a house (*Roots* v. *Beaumont* (1886), 51 J. P. 197). See also as to the meaning of the expression "house which is let in lodgings or occupied by members of more than one family," cases in note (*d*), *infra*.

The L. G. B. issued model byelaws under this section. See Mackenzie and Handford's Model Byelaws, Vol. I., p. 445. In the memorandum prefixed to the byelaws it is stated that the Board have had regard to the remarks of the judges in the case of *Langdon* v. *Broadbent* (p. 153, *ante*), and have exempted from the operation of the byelaws certain houses let in lodgings which from their character are not likely to require supervision. The memorandum states that the exemption clause consists of two sections, of which one relates to unfurnished, and the other to furnished lodgings. It assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the byelaws. In the case of houses of higher rateable value the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will rest with the local authority, when framing byelaws upon the basis of the model series, to determine what limits of rateable value or rent the circumstances of their district may render it desirable to prescribe.

For form of resolution adopting byelaws, see Encyclopædia of Forms and Precedents, Vol. X., p. 322.

(*b*) By the Housing of the Working Classes Act, 1885, s. 8, *post*, Vol. II., local authorities are now empowered to make byelaws under this section without any declaration by the M. of H. The effect of this enactment is practically to repeal the opening words of this section down to and including the word "notice."

(*c*) Model byelaws have been issued by the M. of H. As to the making, confirmation, publication, and enforcing of byelaws, see ss. 182—186, 251, *post*. As to the houses which should be affected by such byelaws, see note (*a*), *supra*. Byelaws.

By the Housing, Town Planning, etc. Act, 1909, s. 16, the power of making and enforcing byelaws under this section (or in London under the similar section (s. 94) of the P. H. (London) A., 1891), is now, in the case of houses intended for the working classes, extended to the making and enforcing of byelaws imposing any duty (being a duty which may be imposed by the byelaws, and which involves the execution of work) upon the *owner* in addition to or in substitution for any other person having an interest in the premises. For the purpose of discharging any duty so imposed the owner or other person is given a right of entry. See s. 16 (1), (2) *in extenso*, *post*, Vol. II. These provisions get rid of the difficulty disclosed in *Arlidge* v. *Islington Borough Council*, *infra*.

If an owner or other person fails to execute any work which he has been required to execute under the byelaws, the authority may, after giving the prescribed notice, execute such work at his expense (Housing, Town Planning, etc. Act, 1909, s. 16 (3), *post*, Vol. II.).

See also the further enlargement of the scope of byelaws made under this section enacted in s. 26 of the Housing, Town Planning, etc. Act, 1919, Vol. II., *post*.

Byelaws made under the similar section (s. 94) of the P. H. (London) A., 1891, provided "that the landlord in the first week in April in every year, and at such other times as the condition thereof may render it necessary, shall cause every part of the premises of a house let in lodgings or inhabited by members of more than one family to be cleansed, and the ceilings and interior walls to be lime-washed." In one case "landlord" was defined as the person who received the rack-rent of the premises; and in the other case the definition included the person who received the profits arising from the letting of the house as a lodging-house. It was held in each case that the byelaw was unreasonable, and therefore invalid, because it did not provide for notice being given to the landlord, who was the person made responsible, and who might have no knowledge of any offence being committed. It was held, also, by Lord ALVERSTONE, C.J., and KENNEDY, J., WILLS, J., dissenting, that the byelaw in requiring the work to be done throughout a whole borough in one week (which might be Easter week) was not unreasonable (*Stiles* v. *Galinski*; *Nokes*

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and Nokes v. *Islington Borough Council* (No. 2), [1904] 1 K. B. 615; 68 J. P. 183). A byelaw made under the same section provided that: "Subject to the provisions of these byelaws the landlord of a lodging-house shall, in the month of April, May, or June in every year, cause every part of the premises to be cleansed . . ." The word "landlord" was defined by the byelaws to mean, in relation to a lodging-house, the person for the time being receiving the rack-rent of the lodging-house, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent. It was held that the byelaw was unreasonable and therefore invalid, as it cast upon landlords an obligation which they might not be able to obey without committing a breach of contract or a trespass (*Arlidge* v. *Islington Borough Council*, [1909] 2 K. B. 127; 73 J. P. 201); but see now s. 16 of the Act of 1909, *supra*.

A byelaw was proposed by an urban district council requiring the landlord of a lodging-house on receiving from the council a notice or placard wherein should be stated the description or number and the dimensions or cubical contents of the room to which such notice or placard may apply, and the maximum number of persons authorised to be received at any one time in such room, to put up, affix and continue such notice or placard in a suitable and conspicuous position in such room, and in such a manner that the words and figures in such notice or placard may be clearly and distinctly visible and legible. Also that neither he nor a lodger in the lodging-house should at any time wilfully conceal, deface, alter or obliterate any letter or figure in such notice or placard, or wilfully or carelessly injure or destroy such notice or placard. The L. G. B. took the view that it could not be accepted as within the powers of the district council under the section.

"Occupied by members of more than one family."

(*d*) See the notes on this word in ss. 77 and 87, *ante*, pp. 154, 160. The expression "house let in lodgings or occupied by members of more than one family" occurs also in s. 94 of the P. H. (London) A., 1891, and in a case under that section it was held that a block of artisans' dwellings, where the landlord did not reside, and which was divided into tenements occupied severally by different families, was not such a house, and that therefore the authority had no power to make byelaws for the regulation of the building (*Weatheritt* v. *Cantlay*, [1901] 2 K. B. 285; 65 J. P. 644). In a later case it was decided that the following was such a house, viz.: an ordinary six-roomed house not specially constructed to be let in separate tenements, which had a common staircase and one common front door which was always kept open; on each floor were two rooms let to and occupied by a separate family; and the landlord did not reside on the premises or have any representative residing there (*Kyffin* v. *Simmons* (1903), 67 J. P. 227; 1 L. G. R. 381).

Separation of sexes.

In the model series above mentioned the L. G. B. deemed it inexpedient to provide for a variation of the number of occupants or for the separation of the sexes. The omission of the latter provision is due "to the doubt which the Board entertained as to how far this desirable object can be practically attained, in view of the ordinary conditions of life in lodgings of the poorer class. When, however, the local authority are satisfied that a rule on this subject can be enforced without hardship, as, for instance, in cases where it is found that individual holdings in the lodging-houses of a district generally comprise two or more rooms, the Board readily co-operated with the authority in framing a byelaw to provide for the separation of the sexes."

Drainage.

(*e*) These byelaws will not prevent the enforcing of the provisions of this Act which apply to these matters. No byelaws as to drainage are included in the model series, as the Board considered the statutory provisions on this subject to be sufficient without them.

Cleansing, etc.

(*f*) These times must be stated in the byelaws. As to the reasonableness of a time so fixed, see *Stiles* v. *Galinski*, *supra*. See s. 82, *ante*, p. 158, as to common lodging-houses.

Infectious disease.

(*g*) Byelaws for these purposes are now unnecessary in view of the provisions of the Infectious Disease (Notification) Act, 1889, and the Infectious Disease (Notification) Extension Act, 1899, *post*.

(*h*) This passage was introduced from the Sanitary Act, 1866, s. 36, which was passed when the Common Lodging-house Acts were in force.

Reference may here be made to the Merchant Shipping Act, 1894, s. 214, in

App. I., *post*, Vol. II., which provides for seamen's lodging-houses; and also to the Housing of the Working Classes Act, 1890, *post*, Vol. II., which consolidated with amendments all the previous Acts relating to workmen's dwellings and lodging-houses for the labouring classes. See also the Housing of the Working Classes Acts, 1894, 1900, and 1903, and the Housing, Town Planning, etc, Acts, 1909 and 1919, *post*, Vol. II. **Note to Section 90.**

NUISANCES (*a*).

91. For the purposes of this Act— Definition of nuisances.

1. Any premises (*b*) in such a state (*c*) as to be a nuisance or injurious to health (*d*) :
2. Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit (*e*) so foul or in such a state as to be a nuisance or injurious to health (*d*) :
3. Any animal (*f*) so kept as to be a nuisance or injurious to health (*d*) :
4. Any accumulation or deposit (*g*) which is a nuisance or injurious to health (*d*) :
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family (*h*) :
6. Any factory, workshop, or workplace *not already under the operation of any general Act for the regulation of factories or bakehouses* (*i*), not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases vapours dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health (*d*), or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein (*k*) :
7. Any fireplace or furnace which does not as far as practicable consume the smoke (*l*) arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever ; and
8. Any chimney (*m*) (not being the chimney of a private dwelling-house (*n*)) sending forth black smoke in such quantity as to be a nuisance (*o*),

shall be deemed to be nuisances (*p*) liable to be dealt with summarily in manner provided by this Act : Provided—

First (*q*). That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public (*r*) health :

Secondly (*s*). That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act and dismiss the complaint, if it is

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satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke, arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

Extension of term by the P. H. A., 1907, s. 35.

(*a*) Where s. 35 of the P. H. A., 1907, has been applied to any district, the class of nuisances specified in s. 91, *supra*, as nuisances liable to be dealt with summarily, will be extended so as to include the following:

"(1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health;

"(2) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building; and

"(3) Any deposit of material in or on any building or land which shall cause damp in such building or in an adjoining building so as to be dangerous or injurious to health."

See also s. 46 of the same Act as to cesspools, ashpits, etc., wells and disused wells.

For a definition of a public nuisance, see the note under s. 111, *post*, p. 210.

"Premises."

(*b*) See the definition of "premises" in s. 4, *ante*, p. 7.

Sewage works and public sewers not included.

It has been held that these words do not apply to a nuisance arising from sewage tanks and works constructed under this Act by a local authority, and that a court of summary jurisdiction has, therefore, no power, on proof of a nuisance so caused, to make an order for its abatement (*R.* v. *Parlby* (1889), 22 Q. B. D. 520; 53 J. P. 327). WILLS, J., said (*ibid.*): "It is clear that the expression 'premises in such a state as to be a nuisance' has not the wide application claimed for it by the respondents, who say that it is answered by any premises on which a nuisance exists. If that were so, the enumeration of, at all events, the several kinds of nuisance specified under the subsequent heads would be unnecessary. We do not attempt to define every class of case to which the first head applies, but we think it is confined to cases in which the premises themselves are decayed, dilapidated, dirty, or out of order, as, for instance, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into walls or floors, or where they are so dilapidated as to be a source of danger to life or limb." So, too, the provisions of the Public Health (London) Act, 1891, for the abatement of nuisances do not apply to a nuisance alleged to arise from a public sewer vested in the London County Council, and a court of summary jurisdiction has no power to deal with such an alleged nuisance (*Fulham Vestry* v. *London C. C.*, [1897] 2 Q. B. 76; 61 J. P. 440).

Therefore, if a nuisance arises from sewage works, the persons aggrieved are left to their remedy by action. An injunction in such a case was granted in *Downing* v. *Falmouth United Sewerage Board* (1888), 4 T. L. R. 552.

Tents, vans, etc.

By the Housing of the Working Classes Act, 1885, s. 9, *post*, Vol. II., a tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, is to be deemed to be a nuisance within the meaning of this section. See also *Att.-Gen.* v. *Brown* and *Att.-Gen.* v. *Stone*, *post*, p. 168.

"In such a state" as to be, etc.

(*c*) The words of the clause are "premises *in such a state*," etc. It would appear, therefore, that they apply only to premises which are a nuisance by reason of their condition, and not to premises which are a nuisance by reason of the purposes for which they are used. Thus, it is submitted that they would not apply to premises used for an offensive trade so long as the condition of the premises was not in question. Nor would they apply to a building which was a nuisance only by reason of its being used as a hospital for infectious diseases, as in *Metropolitan Asylums District* v. *Hill* (1881), 6 App. Cas. 193; 45 J. P. 664. There it was held that an asylum for the reception of poor persons suffering from smallpox or other infectious or contagious disorders may be a nuisance restrainable by injunction, though erected and maintained

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under the provisions of an Act which enables, but does not order, such asylums to be erected; and see *Bendelow* v. *Wortley Union (Guardians of)* (1887), 4 T. L. R. 67, and *Garton* v. *Guildford, Godalming and Woking Joint Hospital Board*, Times, March 23rd, 1895. On the other hand, it is submitted that a house which is a nuisance by reason of its being ruinous and likely to fall down might be a nuisance within this section. A house in such a condition may be a nuisance at common law (*R.* v. *Watts* (1703), 1 Salk. 357). See also s. 160, *post*, p. 363, as to ruinous and dangerous buildings. As to the liability of a person for allowing premises to be out of repair, and so a nuisance whereby injury is caused, see *Payne* v. *Rogers* (1794), 2 H. Bl. 350; *Chauntler* v. *Robinson* (1849), 4 Ex. 163; *Leslie* v. *Pounds* (1812), 4 Taunt. 649; *Todd* v. *Flight* (1860), 9 C. B. (N.S.) 377 (fall of a chimney); *Gandy* v. *Jubber* (1865), 9 B. & S. 15 (dangerous area grating); *Pretty* v. *Bickmore* (1873), L. R. 8 C. P. 401; 37 J. P. 552 (defective coal plate); *Nelson* v. *Liverpool Brewery Co.* (1877), 2 C. P. D. 311 (fall of a chimney pot); *Gwinnell* v. *Eamer* (1875), L. R. 10 C. P. 658 (defective cellar grating); *Silverton* v. *Marriott* (1888), 52 J. P. 677; 59 L. T. 61 (ruinous wall); *Sandford* v. *Clarke* (1888), 21 Q. B. D. 398; 52 J. P. 773; *Braithwaite* v. *Watson* (1889), 5 T. L. R. 331; *Bowen* v. *Anderson*, [1894] 1 Q. B. 164; 58 J. P. 213; and *Horridge* v. *Makinson* (1915), 84 L. J. K. B. 1294 (defective coal plates); *Miller* v. *Hancock*, [1893] 2 Q. B. 177; 57 J. P. 758; *Mellor* v. *Henderson* (1913), 50 Sc. L. R. 708; *Kennedy* v. *Shotts Iron Co.*, [1913] S. C. 1443; *Lucy* v. *Bawden*, [1914] 2 K. B. 318; *Grant* v. *Fleming & Co.*, [1914] S. C. 228; *Gaunt* v. *M'Intyre*, [1914] S. C. 43; *M'Ilwaine* v. *Stewart*, [1914] S. C. 934; and *Groves* v. *Western Mansions* (1916), 33 T. L. R. 76 (defective common stair in tenement dwellings); *Lane* v. *Cox*, [1897] 1 Q. B. 415; *Dickson* v. *Scott, Ltd.* (1914), 30 T. L. R. 256 (injury to tenant's workman); *Harrold* v. *Watney*, [1898] 2 Q. B. 320; *Mullan* v. *Forrester*, [1921] 2 I. R. 412 (dangerous fence); *Cavalier* v. *Pope*, [1906] A. C. 428; *Malone* v. *Laskey*, [1907] 2 K. B. 141; and *Dobson* v. *Horsley*, [1915] 1 K. B. 634 (injury to tenant's wife or child); *Kennedy* v. *Bruce*, [1907] S. C. 845 (injury to tenant's servant); *Barker* v. *Herbert*, [1911] 2 K. B. 633; 75 J. P 481; *Smith* v. *Keys* (1912), 46 Ir. L. T. 68; and *Dobson* v. *Horsley*, *supra* (defective area railings); *Wheeler* v. *Morris* (1915), 84 L. J. K. B. 1435 (injury to passers-by by fall of sunblind caused by mischievous acts of strangers); *Hart* v. *Rogers*, [1916] 1 K. B. 646; 32 T. L. R. 150 (defective roof, damage by leakage into flat immediately under); *Norman* v. *Gt. Western Rail. Co.*, [1915] 1 K. B. 584 (liability of railway companies to the public using their railway stations). See also *Ryall* v. *Kidwell*, [1914] 3 K. B. 135; 78 J. P. 377, decided under the Housing, Town Planning, etc. Act, 1909, ss. 14, 15.

For an Irish case in which an unsuccessful attempt was made to prove that premises, viz., one flat in a house, were in such a state as to be a nuisance and injurious to health because the tenant of that flat had to pass through the lower flat in order to reach the only water-closet, see *Belfast Corporation* v. *Thompson*, on p. 100, *ante*.

In *Att.-Gen.* (*ex rel. Strand District Board of Works*) v. *Kirk* (1896), 12 T. L. R. 514, the plaintiff moved for an interlocutory injunction to restrain the defendant, a builder, from allowing an excavation or trench in a street to remain open, and from allowing the footpath on one side of the street to remain without a proper pavement. The defendant contended that the licence from the relators under which he opened the street had expired, and that in consequence of his having failed to carry out a building agreement in respect of a site adjoining the street the freeholder had determined it and claimed possession of the site. The Court of Appeal, finding that the defendant was not out of possession, restrained him so far as was necessary for the *interim* protection of the public, *i.e.*, from allowing the excavation or trench to remain so as to be dangerous to the street, or the sewer or the adjoining houses, and also from allowing it to remain in such a state as to be or create a nuisance, or to be or become injurious to the public health.

As to a nuisance from an accumulation of soil causing damp to an adjoining house, whereby it becomes unhealthy, see *Hurdman* v. *N. E. Rail. Co.* (1878), 3 C. P. D. 168; 42 J. P. 388. See hereon s. 35 of the P. H. A., 1907, *post*. In *Stearn* v. *Prentice*, [1919] 1 K. B. 394, a bone manure manufactory which had been carried on for thirty years without complaint attracted rats which did damage to the plaintiffs' crops situated a short distance away. It was held that no cause of action had been established against the defendants.

It is at common law the duty of an owner of vacant land to prevent it from being

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a public nuisance, although such nuisance may be caused by the acts of others; and the Attorney-General, on behalf of the public, is entitled to an injunction to prevent an owner committing a breach of that duty (*Att.-Gen.* v. *Tod-Heatley*, [1897] 1 Ch. 560). See also *Chibnall* v. *Paul & Son*, *infra*; and see the P. H. A., 1907, s. 31, *post*, as to fencing vacant land.

In *Att.-Gen.* v. *Brown and Others*, Times, July 23rd, 1898, application was made for an injunction to restrain a landowner and two gipsies, from using or permitting to be used a small piece of ground as a gipsy encampment, so as to cause a nuisance. NORTH, J., on the landowner undertaking not to relet the land on any future occasion for a similar purpose, refrained from granting an injunction against her, but granted an interlocutory injunction restraining the gipsies from using or occupying the land for the encampment of gipsies or like people without previously making sanitary arrangements to the satisfaction of the relators. See also *Att.-Gen.* v. *Stone* (1895), 60 J. P. 168. For a case in which it was alleged that a seaside encampment was a nuisance, see *Att.-Gen.* v. *Kerr and Ball* (1915), 79 J. P. 51; 12 L. G. R. 1277.

Whenever the legislature has authorised a proprietor to make a particular use of his land, and the authority is permissive and not imperative, the legislature must be held to have intended that the use sanctioned is not to be in prejudice of the common law rights of others (*Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535).

"Nuisance *or* injurious to health."

(*d*) Upon similar words in 18 & 19 Vict. c. 121, s. 10, it was held that the dripping of water from a railway bridge on to the road beneath was not a nuisance within the Act (*G. W. Rail. Co.* v. *Bishop* (1872), L. R. 7 Q. B. 550; 37 J. P. 5). But though the word nuisance as used in this section does not include every common law nuisance (see also note (*o*), *infra*), it is not necessary that a nuisance in order to be within the section should also be injurious to health, for the terms used are disjunctive, nuisance *or* injurious. It is sufficient if the nuisance is one which interferes with personal comfort (*per* STEPHEN, J., in *Bishop Auckland L. B.* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; 47 J. P. 389). In that case an accumulation or deposit of cinders, ashes, and refuse which was allowed to smoulder and throw off strong fumes, was held to be a nuisance and within this section, though it was not injurious to health. See also *Banbury Sanitary Authority* v. *Page* (decided upon similar words in s. 47) (1881), 8 Q. B. D. 97; 46 J. P. 184; *Malton Sanitary Authority* v. *Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302; 44 J. P. 155; *Houldershaw* v. *Martin* (1885), 49 J. P. 179; 1 T. L. R. 323.

(*e*) As to this clause, see generally ss. 41, 47, *ante*, pp. 105, 116, and s. 45 of the P. H. A., 1907. As to gutters or drains causing damp in buildings, see s. 35 (2) of the Act of 1907, and as to cesspools, ashpits, etc., wells or disused wells, see *ibid.*, s. 46.

What "drains," etc. within the section.

It must be observed that this clause relates only to a "drain," not to a "sewer." See *per* WILLS, J., in *R.* v. *Parlby*, *ante*, p. 166, and *Fulham* (*Vestry of*) v. *London C. C.*, *ante*, p. 166. See also *Fordom* v. *Parsons*, *Molloy* v. *Gray*, and *Wincanton R. D. C.* v. *Parsons*, cited at length on p. 51, *ante*.

An owner of a publichouse erected a urinal in a private passage leading out of the street, and enclosed it between doors, which he kept locked at night. There was a space between the line of area railings in the street and the urinal door nearest to the street, which space he shut off from the street by an iron gate flush with the line of railings. This gate was never locked. Persons habitually used the space between the door and the gate in such a manner as to cause to the neighbours a nuisance, which he took no steps to prevent:—*Held*, by KAY, J., that he was responsible for such user, it being a probable consequence of the way in which he had arranged the premises (*Chibnall* v. *Paul & Son* (1881), 29 W. R. 536).

The appellants were entitled to discharge refuse from their chemical works by two separate drains into a public sewer. One drain discharged liquid impregnated with muriatic acid, and the other liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellant's drains. The respondents had not properly flushed, cleansed and trapped the sewer. Upon complaint by the respondents of the escape of the sulphuretted hydrogen gas, justices made an order for the abatement thereof on the appellants:—*Held*, that the escape of the gas was a nuisance within the meaning of the corresponding provisions of 18 & 19 Vict. c. 121, s. 8; that it arose from the

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acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance (*St. Helen's Chemical Co.* v. *Corporation of St. Helen's* (1876), 1 Ex. D. 196; 40 J. P. 471). It is to be observed that this decision was given with reference to 18 & 19 Vict. c. 121, which contains no definition of "drain" and "sewer," and it may be questioned whether the decision is applicable to this section.

In districts where ss. 16 and 17 of the P. H. A., 1890, *post*, are in force, it is an offence to turn into a sewer any injurious matter or any chemical waste, steam, heated water, etc. which alone or in combination with the sewage causes a nuisance or is dangerous or injurious to health. And see as to a noxious trade effluent, *Liverpool Corporation* v. *Coghill*, [1918] 1 Ch. 307; 82 J. P. 129.

The appellants' predecessor in title deposited with the respondents a plan providing for the draining of certain houses into cesspools. The cesspools were not, however, constructed, and the appellants' predecessors, without permission, turned the slop and scullery water from the houses into a surface water drain, made by the respondents upon a highway upon which the houses abutted. The slop and scullery water passed through the drain into an open ditch and caused a nuisance. The respondents had not constructed any sewer by means of which the appellants could drain their houses. Upon a summons under s. 95 of the P. H. A., 1875, the justices made an order upon the appellants to abate the nuisance:—*Held*, that the nuisance arose from the want of a "structural convenience" within the meaning of s. 94, and that the order was therefore properly made; and held, further, that although the surface water drain was a "sewer" within the definition in s. 4, the appellants, even if they had given the notice prescribed by s. 21, would not have been entitled to use it to carry off their slop and scullery water (*Kinson Pottery Co.* v. *Poole Corporation*, [1899] 2 Q. B. 41; 63 J. P. 580). See also the cases cited along with the last-mentioned case on pp. 79, 80, *ante*.

See *R.* v. *Pedly* (1834), 1 A. & E. 822, as to the erection and use of privies which became a nuisance for want of cleansing; *Russell* v. *Shenton* (1842), 3 Q. B. 449, as to a nuisance from omitting to cleanse drains.

Under the L. G. A., 1894, s. 8 (1), a parish council have power to deal with any pond, pool, open ditch, drain, or place containing or used for the collection of any drainage, filth, stagnant water, or matter likely to be prejudicial to health by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority. But by s. 8 (3) nothing in the section is to derogate from any obligation of a district council with respect to the execution of sanitary works.

Keeping of animals.

(*f*) See s. 44, *ante*, p. 113, as to byelaws relating to the keeping of animals on premises; and s. 47 as to keeping swine in a dwelling-house, or so as to be a nuisance to any person. The proceedings under this and the following sections may in some cases be preferable to that under the byelaws or under s. 47. It will be observed that the byelaws under s. 44 relate only to the keeping of animals so as to be injurious to health. Again, s. 47 relates only to the keeping of swine, while this section applies generally to the keeping of any animals. The above provision is therefore much more extended in scope than either of the former sections. In addition to the cases cited in the notes to ss. 44, 47, *Draper* v. *Sperring* (1861), 25 J. P. 566; 10 C. B. (N.S.) 113, may be referred to. There sheep droppings in a market were held to amount to a nuisance.

As to the burial of carcases washed on shore, see the Diseases of Animals Act, 1894, s. 46; *The Suevic*, [1908] P. 292; 72 J. P. 407, and the Horses (Importation and Transit) Order, 1913, s. 19.

"Deposits."

(*g*) As to this clause, see the first proviso to the section. On the subject generally, see ss. 42, 43, 49, *ante*, and cases cited in the notes thereto, and *Draper* v. *Sperring*, *supra*.

As to deposits causing damp in buildings, see the P. H. A., 1907, s. 35 (3), *post*, and *Hurdman* v. *N. E. Rail. Co.*, p. 167, *ante*. Where a stableman kept dung accumulating so that the neighbours had to shut their windows, he was held liable to be convicted under a local Act which imposed a penalty on offensive matter being kept so as to cause a nuisance (*Smith* v. *Waghorn* (1863), 27 J. P. 744). As to an accumulation of seaweed in a harbour, see *Margate Pier and Harbour Proprietors* v. *Margate Town Council* (1869), 33 J. P. 437; 20 L. T. 564.

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In an action against a railway company for an alleged nuisance arising from smells proceeding from open trucks loaded with house refuse which were allowed to stand some hours at a junction, the court refused to grant an injunction on the ground that there was no remissness on the part of the company in the forwarding of the trucks, and that they were acting reasonably in carrying the refuse to the junction and detaining it there (*Att.-Gen.* v. *S. E. & C. Rail. Cos.' Managing Committee* (1902), 24 M. C. C. 343). On appeal (25 M. C. C. 280), the case was settled upon the defendants undertaking to put suitable coverings on the trucks and not to detain them under ordinary circumstances for a period exceeding two and a half hours.

In Ireland it has been held that the accumulation or deposit must have an element of permanency, and that the loading and unloading of manure in the ordinary course from a railway company's waggons for delivery to customers was not within the corresponding enactment (*G. N. Rail. Co.* v. *Lurgan Commissioners*, [1897] 2 I. R. 340); *cf.* also *L. B. & S. C. Rail. Co.* v. *Haywards Heath U. D. C.*, p. 114, *ante*.

A plea of enjoyment of right for twenty years of a mixen on defendant's land contiguous to plaintiff's house, whereby during all that time offensive smells necessarily and unavoidably arose, from the said mixen, was held bad on the ground that it did not show a right to cause offensive smells on the plaintiff's premises, nor that any smells had in fact been used to pass beyond the limits of defendant's own land (*Flight* v. *Thomas* (1839), 10 A. & E. 590). See also *Att.-Gen.* v. *Tod-Heatley*, *ante*, p. 168; *Bland* v. *Yates*, *post*, p. 173. Defendants deposited on their land house refuse which caused a nuisance to adjoining occupiers by offensive smells and flies, particularly in summer and in certain states of the atmosphere and wind. The defendants' evidence was to the effect that at other times no nuisance was occasioned. JOYCE, J., granted an injunction restraining the defendants from bringing refuse on their land, so as to occasion a nuisance to the annoyance of persons in its neighbourhood, or so as to be or become injurious to the public health. He intimated that, if the defendants' evidence was correct, it was possible to bring the refuse on the land at certain times, though this must be done on their own responsibility, and that the injunction would not hinder them from doing this, so long as they did not occasion a nuisance (*Att.-Gen.* v. *Keymer Brick Co.* (1903), 67 J. P. 434; 1 L. G. R. 654).

Over-crowding in "houses," etc.

(*h*) This passage renders immaterial the decision in *Rye Union* (*Guardians of*) v. *Payne* (1875), 44 L. J. M. C. 148; 39 J. P. 375.

In a Scotch case (*Home* v. *Local Authority of Kelso* (1876), 3 Coup. 239), it was held that where a landlord let along with a farm a cottage, into which a tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance.

As to the overcrowding of a chapel used as a night shelter for destitute persons, see *R.* v. *Mead, Ex parte Gates* (1895), 64 L. J. M. C. 169; 59 J. P. 150. A notice directed to a person officially in charge of a night shelter that "the premises were so overcrowded as to be injurious or dangerous to the health of the inmates," and a summons and order founded upon such notice, were held to be sufficient to convey to the recipient that the nuisance complained of related to the overcrowding of a "house or part of a house," as referred to in the P. H. (London) A., 1891, s. 2 (1) (e). The temporary occupiers of such night shelters are equivalent to "inmates" of such house (*R.* v. *Slade* (1896), 65 L. J. M. C. 108; 60 J. P. 358).

"House" includes a day school, and "inmates" includes scholars (*Wimbledon U. D. C.* v. *Hastings* (1902), 67 J. P. 45; 87 L. T. 118).

As to overcrowding in tents, vans, sheds, etc., see the Housing of the Working Classes Act, 1885, s. 9, *post*, Vol. II.

(*i*) The words in italics were repealed by the Factory and Workshop Act, 1878, s. 107, and Sched. VI. See as to bakehouses, *ante*, pp. 34, 42.

Factories, etc.

(*k*) The Factory and Workshop Act, 1901, s. 1 (2), provides that the provisions of this section (s. 91) with respect to a factory, workshop or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to any "factory" to which s. 1 of that Act applies. That Act contains provisions relating to the sanitary condition of factories, workshops and workplaces; but s. 2 (1) thereof provides that the provisions of the present section (s. 91), with respect to a factory, workshop or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall apply to every factory, etc. except any factory to which

s. 1 of the Act of 1901 applies. For the full text of these provisions, see App. I., *post*, Vol. II. **Note to Section 91.**

The word "workplace," as used in s. 38 (1) of the P. H. (London) A., 1891, was held to have a wider meaning than factory or workshop. A stable and stableyard, where a number of hirers of cabs attend as customers, is a "workplace," and must be provided with suitable accommodation in the way of sanitary conveniences (*Bennett* v. *Harding*, [1900] 2 Q. B. 397).

(*l*) As to this clause, see the second proviso to this section and notes thereto. That proviso applies only to the first limb of this clause and not to the second. See also the provision in s. 108 of the Towns Improvement Clauses Act, 1847, with respect to the prevention of smoke. That provision is, however, not incorporated by the present Act. Furnace not consuming smoke.

Under similar words in the P. H. (Scotland) A., 1867 (which does not, however, contain any such proviso as the second proviso to this section), it was held that a furnace could not be said not to consume its own smoke as far as practicable merely because on a few isolated dates it did not do so; the court said that the section contemplated a badly-constructed furnace, or systematic misuse of a well-constructed one (*Dumfries Commissioners* v. *Murphy* (1884), 11 Ct. of Sess. Cas. (4th ser.) 694). In *Leith JJ.* v. *Jas. Bertram & Son*, [1915] S. C. 1133, which was decided under the P. H. (Scotland) Act, 1897, s. 16 (9), it was held that the mere absence of smoke consuming devices *such as mechanical or underfeed stokers* was not evidence in itself of a nuisance, and that under certain circumstances stoking by hand was more suitable than by mechanical means.

A local improvement Act enacted that every furnace used should be constructed so as to consume its own smoke, and that if any person should use a furnace not so constructed, or should use such furnace so negligently that the smoke should not be consumed, every person so offending, being the owner or occupier, or being a foreman or other person employed by such owner or occupier, should forfeit a sum of £5. W., the owner, used furnaces properly constructed, and employed a competent person to use them, but without W.'s knowledge, the servant negligently used them so that the smoke was not consumed. It was held (BLACKBURN, J., *diss.*) that the servant only could be convicted of the offence, and not the master (*Willcocks* v. *Sands* (1868), 32 J. P. 565).

A defendant, the owner and occupier of certain premises in the metropolis used for the purpose of manufacture, was summoned under the Smoke Nuisance (Metropolis) Act, 1853, s. 1, for negligently using a furnace in such premises so that the smoke arising therefrom was not effectually consumed. The furnace in question was constructed so as to consume its own smoke if carefully used; and the emission of smoke complained of was caused by the carelessness of the stoker. The defendant was not personally guilty of any negligence in connection with the matter. It was held that he was not criminally responsible for the negligence of his servant, and could not be convicted (*Chisholm* v. *Doulton* (1889), 22 Q. B. D. 736; 53 J. P. 550). This case, however, was distinguished in *Armitage, Ltd.* v. *Nicholson*, [1913] W. N. 116; 77 J. P. 239, where under a differently worded section in a Bradford Act employers were held liable for the negligent stoking of their men; and see also *Drummond & Sons* v. *Nicholson* (1915), 79 J. P. 525; 13 L. G. R. 958.

In consequence of the saving clause in s. 44 of 18 & 19 Vict. c. 121 (see now s. 334, *post*), it was held that smelting works were exempt from the smoke provisions of the Nuisances Removal Acts (*Norris* v. *Barnes* (1872), L. R. 7 Q. B. 537; 37 J. P. 246). But s. 334, *post*, qualifies the original saving by the words "so as to obstruct or interfere with any of such processes"; and in the case of a coal mine it has been held that such words may bring its chimney within this section. Such a chimney is privileged by s. 334, but whether it is exempt from prosecution depends on whether the smoke nuisance can be prevented reasonably without obstructing the efficient working of the mine. If it can be prevented without obstructing the efficient working of the mine, then the chimney of a coal mine is just as subject to the operation of this section as any other chimney (*Patterson* v. *Chamber Colliery Co.* (1892), 56 J. P. 200; 8 T. L. R. 278).

As to railway engines not consuming their own smoke, see 8 & 9 Vict. c. 20, s. 114; 31 & 32 Vict. c. 119, s. 19, passed in order to meet the omission disclosed in *M., S.*, Railway engines.

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etc. Rail. Co. v. *Wood* (1859), 24 J. P. 38; 2 El. & El. 344; *S. E. Rail. Co.* v. *London C. C.* (1901), 65 J. P. 568; 84 L. T. 632, and *London C. C.* v. *G. E. Rail. Co.*, [1906] 2 K. B. 312; 70 J. P. 356.

Road locomotives.

By the Highways and Locomotives (Amendment) Act, 1878, s. 30, every locomotive used on any highway must be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, is liable to a fine not exceeding five pounds for every day during which such locomotive is used on any highway. In prosecuting a person for unlawfully using a locomotive not consuming, as far as practicable, its own smoke, contrary to s. 30, the burden of proof that it does so consume its smoke lies on the defendant (*Pitt-Rivers* v. *Glasse* (1891), 55 J. P. 663; 7 T. L. R. 438). The section does not apply to light locomotives and heavy motor cars, if the weight of the car unladen does not exceed five tons or six and a half tons with an unladen vehicle drawn by it: see the Locomotives on Highways Act, 1896, s. 1 and Sched., the Motor Car Act, 1903, s. 12 (1), and Art. III. of the Heavy Motor Car Order, 1904. The position of one of the last-mentioned vehicles was recently considered under the following circumstances:—The appellants were summoned under s. 30, for using on a highway a locomotive which did not consume so far as practicable its own smoke. The locomotive was a petrol motor-omnibus weighing less than five tons, and had a smokeless engine, but it was seen to emit considerable quantities of smoke which smelt of burnt oil. This was caused by the negligence of the driver in supplying an excessive quantity of lubricating oil to the working parts. The magistrate found, as a fact, that the omnibus was so constructed that no smoke or visible vapour could be emitted therefrom, except by reason of the driver's negligence:—*Held*, that as the motor-omnibus weighed less than five tons, and was so constructed that no smoke or vapour was emitted therefrom, except from a temporary cause, it was exempted by s. 1 of the Locomotives on Highways Act, 1896, as varied by Art. III. of the Heavy Motor Car Order, 1904, from the operation of s. 30 of the Highways and Locomotives Act, 1878, and that, therefore, the appellants had committed no offence against the section under which they were summoned (*Star Omnibus Co.* (*London*) *Ltd.* v. *Tagg* (1907), 71 J. P. 352; 97 L. T. 481). *Cf.* also *R.* v. *Wilbraham* (1907), 71 J. P. 336; 96 L. T. 712; but see *Hindle* v. *Noblett* (1908), 72 J. P. 373; 99 L. T. 26.

"Chimney" emitting black smoke.

(*m*) The owner of a steamship on the Thames was summoned under s. 24 (b) of the London Act, for a nuisance caused by the emission of black smoke from the funnel of the steamship. It was held that the funnel was a "chimney" within the meaning of the section (*Tough* v. *Hopkins*, [1904] 1 K. B. 804; 68 J. P. 274). So, too, *semble*, would be the funnel of a railway engine. As to chimneys of mines, smelting works, etc., see preceding note and *Patterson* v. *Chamber Colliery Co.*, there cited.

The respondents were summoned for sending forth black smoke on a certain day from a chimney of premises belonging to them (not being the chimney of a private dwelling-house) in such quantity as to be a nuisance within the meaning of the Nuisances Removal Acts (18 & 19 Vict. c. 121, s. 12; 23 & 24 Vict. c. 77, s. 13; 29 & 30 Vict. c. 90, s. 14). Proof was given that black smoke issued from the chimney on the day named so as to be a nuisance, and that the premises were in the occupation of the respondents, and used as a factory. No evidence was adduced to show that any inquiry had been made to find out who had charge of the furnace causing the smoke at the time of the emission. It was held that the respondents were properly summoned, as the persons by whose permission the nuisance arose, and were responsible as such, if the person causing the smoke to issue was their servant (*Barnes* v. *Ackroyd* (1872), L. R. 7 Q. B. 474; 37 J. P. 116).

G.'s mill sent forth black smoke for more than ten minutes. The furnace was properly constructed and superintended by efficient firemen, and the stoker's own negligence was the cause of the smoke. G. was summoned for a nuisance within the meaning of s. 91. It was held that the justices were wrong in dismissing the charge, and in holding that G. was not liable (*Niven* v. *Greaves* (1890), 54 J. P. 548).

In *Barnes* v. *Norris* (1876), L. R. 7 Q. B. 537; 41 J. P. 150, B. charged N. that black smoke issued from certain chimneys on his premises so as to cause a nuisance. There were five separate chimneys together, each used for a separate purpose. N. objected that the summons was bad for not showing from which of the chimneys

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the smoke was said to issue:—*Held*, that the justices were wrong in allowing this objection, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Semble, per* CLEASBY, B., that if there were several chimneys together which sent forth smoke, though each might not of itself send forth sufficient to be a nuisance, yet an offence might be committed. See also *R.* v. *Waterhouse*, in notes to s. 98, *post*, p. 186.

"Private dwelling-house."

(*n*) As to what is a "private dwelling-house" for the purposes of this section, see *Queen Anne's Mansions* v. *Westminster Corporation* (1901), 46 Sol. J. 70. See also *McNair* v. *Baker*, [1904] 1 K. B. 208; 68 J. P. 66, where it was held that a west-end London club did not come within the exception of a private dwelling-house in s. 24 (b) of the P. H. (London) A., 1891. The club was composed of 750 members and had for many years occupied premises which had previously been a private dwelling-house. There was, however, the usual accommodation for the members, and a staff of servants resided on the premises.

(*o*) Smoke need not be injurious to health in order to be a nuisance within this and the following sections (*Gaskell* v. *Bayley* (1874), 38 J. P. 293; 30 L. T. 516), nor is it necessary to prove that any particular person or property is injuriously affected by it (*South London Electric Supply Corporation* v. *Perrin*, [1901] 2 K. B. 186; 65 J. P. 637).

Common law nuisances by smoke, noise, smell, or vibration.

Smoke, unaccompanied by noise or noxious vapour, noise alone, and offensive odours alone, although not injurious to health, may severally constitute a nuisance, though not one capable of being dealt with summarily under this Act. The material question in all such cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence. An injunction was granted to restrain the issuing of smoke and effluvia from a factory chimney and the making of noise in the factory, though it was situated in a manufacturing town, it being proved that such smoke, effluvia and noise were a material addition to previously existing nuisances (*Crump* v. *Lambert* (1867), L. R. 3 Eq. 409; affirmed (1867), 17 L. T. 133). See also *Savile* v. *Kilner* (1872), 26 L. T. 277 (smoke and vapour from glass works); *Lambton* v. *Mellish*, [1894] 3 Ch. 163; 58 J. P. 835 (noise from rival merry-go-rounds: joint effect a nuisance); *Bedford* v. *Leeds Corporation* (1913), 77 J. P. 430 (annual "feast"); *New Imperial, etc. Hotel, Ltd.* v. *Johnson*, [1912] 1 I. R. 327 (music and dancing after midnight); *Dewar* v. *City and Suburban Racecourse Co.*, [1899] 1 I. R. 345 (horse races on Sunday); *Husey* v. *Barley* (1895), 11 T. L. R. 221 (noise from steam-saws); *Rapier* v. *London Tramways Co.*, [1893] 2 Ch. 588 (effluvia from large stables); *Spruzen* v. *Dossett*, Times, March 4th, 1896 (noise from steam organ); *Phillips* v. *Thomas* (1890), 62 L. T. 793 (roundabouts); *Att.-Gen.* v. *G. C. Rail. Co.*, Times, December 10th, 1898; *Bodfield* v. *Bermondsey Borough Council* (1916), 38 M. C. C. 14 (smell from burning refuse); *Germaine* v. *London Exhibitions, Ltd.* (1896), 75 L. T. 101 (cabs congregating near exhibition); *Sanders-Clark* v. *Grosvenor Mansions Co., Ltd.*, [1900] 2 Ch. 373 (heat, smell and noise from restaurant); *Polsue and Alfieri, Ltd.* v. *Rushmer*, [1907] A. C. 121 (noise from printing machines); *Lyttelton Times Co., Ltd.* v. *Warners*, [1907] A. C. 476; *M'Ewen* v. *Stedman*, [1912] S. C. 156 (vibration from machinery); *Heath* v. *Brighton Corporation* (1908), 72 J. P. 225; 98 L. T. 718; *Dexter* v. *Aldershot U. D. C.* (1915), 79 J. P. N. 580 (noise from electric light works); *Att.-Gen.* v. *Plymouth Fish Guano and Oil Co., Ltd.* (1912), 76 J. P. 19 (smell from guano works); *Moy* v. *Stoop* (1909), 25 T. L. R. 262 (children in a *crèche* crying); *Robinson* v. *London General Omnibus Co., Ltd.* (1910), 74 J. P. 161; 26 T. L. R. 233 (motor omnibuses using a street as a yard); *Gilling* v. *Gray* (1910), 27 T. L. R. 39 (noise from timber yard); *De Keyser's Royal Hotel* v. *Spicer Bros.* (1914), 30 T. L. R. 257 (pile driving at night); *White* v. *London General Omnibus Co.*, [1914] W. N. 78 (omnibus garage); *Pwllbach Colliery Co.* v. *Woodman*, [1915] A. C. 634 (coal dust); *Wood* v. *Conway Corporation*, [1914] 2 Ch. 47 (gasworks fumes); *Bland* v. *Yates* (1914), Times, May 28th (garden manure); *Bainbridge* v. *Chertsey U. D. C.* (1915), 79 J. P. 134; 13 L. G. R. 935 (smell from sewage works); *Rainham Chemical Works, Ltd.* v. *Belvedere Fish Guano Co.*, [1921] A. C. 465 (high explosives factory); *Att.-Gen.* v. *Cory Bros. & Co.*, [1921] A. C. 521 (colliery spoil tip causing landslide); *Att.-Gen.* v. *Roe*, [1915] 1 Ch. 235; 79 J. P. 263; *Priest* v. *Manchester Corporation* (1915), 84 L. J. K. B. 1734; 13 L. G. R. 665 (surface water draining from refuse tip and causing ruts in street adjoining); *Morrow* v.

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Stepney Corporation (1920), 18 L. G. R. 458, affirmed (1921), 43 M. C. C. 33 (dust, grit or ashes from electricity generating station).

As to noxious trades, see ss. 112—115, *post*, p. 211, and s. 51 of the P. H. A., 1907, *post*.

As to the liability on indictment for causing a nuisance by smoke, see *R.* v. *White* (1757), 1 Burr. 333; *R.* v. *Dewsnap* (1812), 16 East, 194, and the Steam Engine Furnaces Act, 1821 (as to costs and orders for abatement). It is to be observed, however, that a defendant cannot be punished under this Act as well as on indictment or similar proceedings. See ss. 111, 340, 341, *post*. As to the right of action for damage to property caused by smoke, see *St. Helen's Smelting Co.* v. *Tipping* (1865), 11 H. L. Cas. 642.

As to the liability of the owner for a smoke nuisance caused by his tenant, see *Rich* v. *Basterfield*, and the remarks thereon in *Harris* v. *James*, *post*, p. 178.

As to the rights of joint owners of a party wall, containing the flues of both houses, if smoke from a fireplace in one house escapes through cracks into the other house, see *Jones* v. *Pritchard*, [1908] 1 Ch. 630.

Ordinary remedy not excluded.

(*p*) As already stated in note (*b*), this section does not apply to every nuisance which may be made the subject of indictment or action. The nuisances enumerated in it, however, may be remedied by ordinary legal proceedings as well as under this Act, subject to the proviso in s. 111, *post*, p. 210, that no person shall be twice *punished* for the same offence. See also ss. 340, 341, *post*.

Other statutory nuisances punishable summarily.

In the case of coal mines, the Coal Mines Act, 1911, s. 26, and in the case of other mines the Metalliferous Mines Regulation Act, 1872, s. 13, contain provisions as to the fencing of abandoned shafts for the prevention of accidents. Shafts not fenced as required by those sections (which differ materially in their wording), may be dealt with as statutory nuisances under the present section (s. 91). The Quarry (Fencing) Act, 1887, contains a similar provision relating to the fencing of quarries. For these provisions, see App. I., *post*, Vol. II.

The Housing of the Working Classes Act, 1885, s. 9, *post*, Vol. II., provides that a tent, van, shed, or similar structure, used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of this section, and the provisions of this Act are to apply accordingly. See also *Att.-Gen.* v. *Brown* and *Att.-Gen.* v. *Stone*, *ante*, p. 168.

Reference may also be made to the Inclosure Act, 1857, as to nuisances on town and village greens and allotments for exercise and recreation; and to 34 & 35 Vict. c. 113, and 54 & 55 Vict. c. 76, ss. 2, 48, 49, as to nuisances in the metropolis for want of water.

Proviso as to trade "deposits."

(*q*) The penalty here referred to is that which may be enforced by virtue of s. 96, *post*, p. 182, to which it might have been more appropriate to append this proviso. Apparently the case must be brought before the court on an information, and the court are not to impose a penalty if they be satisfied as herein mentioned. If, however, the authority are assured that such will be the result, they will be justified in abstaining from fruitless proceedings. See the Summary Jurisdiction Acts, 1848, s. 14, and 1879, s. 39 (2), as to the burden of proof in respect of a proviso, etc. being on the defendant.

(*r*) This points to the injury outside of the premises.

Proviso as to non-consumption of smoke.

(*s*) There is here a material alteration of the L. G. A., 1858, s. 45, and the law is much simplified. The information must, however, be laid, and the court must be satisfied, and if so satisfied must dismiss the complaint. An information was laid against a brewer, for that black smoke was from time to time sent forth from the chimney of his brewery in such quantities as to be a nuisance, and the justices convicted. It was held, on a case stated, that the second proviso in the text applied only to the first part of sub-s. (7), and not to the second part, making it an offence to send forth black smoke in such a quantity as to be a nuisance, and that the defendant was not entitled to call evidence as to the construction of the furnace (*Weekes* v. *King* (1885), 49 J. P. 709; 53 L. T. 51). An attempt was made to question this decision in *Ex parte Schofield*, [1891] 2 Q. B. 428; 56 J. P. 4; but

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the High Court held that they were bound by *Weekes* v. *King*, and the Court of Appeal held that the matter being criminal, no appeal lay from that decision.

A local Act incorporated the smoke provisions of the Towns Improvement Clauses Act, 1847, but contained a similar power to that in the text of remission of the penalties. Where a magistrate found that the only mode by which the emission of smoke complained of could be diminished would render it impossible for the defendant to carry on his business with the furnace he used, which was proved to be properly constructed, the Court of Exchequer held that he had consumed his smoke *as far as possible*, and was entitled to a remission. These words are not to be construed absolutely, but as signifying "as far as possible, consistent with the carrying on of the trade for which the furnace is used" (*Cooper* v. *Woolley* (1867), L. R. 2 Ex. 88; 31 J. P. 135); *Drummond* v. *Nicholson* (1915), 79 J. P. 525; 13 L. G. R. 958, was a case decided under a local Act, which provided that no penalty should be inflicted on the owner or occupier where the furnaces were constructed to consume or burn the smoke arising therefrom, and the emission of smoke was due to the act or default of a stoker, engineer, or other employee. No evidence was called from the person in charge of the furnaces, but expert evidence was given to show that the emission must have been caused by an act or default of the person in charge. The justices declined to accept the expert's evidence and convicted, and this conviction was upheld. And see the cases in note (*l*), *supra*).

Duty of local authority to inspect district for detection of nuisances.

92. It shall be the duty (*a*) of every local authority to cause to be made from time to time inspection of their district (*b*), with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act (*c*) in force within their district requiring fireplaces and furnaces to consume their own smoke.

Remedy in case of default.

(*a*) It will be observed from s. 105 that, apart from action by the local authority, it is open to any person aggrieved to take proceedings for the abatement of nuisances, and for this reason the M. of H. would probably not consider s. 299 applicable should default on the part of the authority be alleged. Under the L. G. A., 1894, s. 8 (3), a parish council has power to deal with insanitary pools, ditches, and drains, but so as not to interfere with any private right or the sewage or drainage work of any local authority. But nothing in that section is to derogate from any obligation of a district council with respect to the execution of sanitary works.

Entry upon premises.

(*b*) See s. 102, *post*, p. 188, as to how this inspection is to be effected. There is no absolute right, in the first instance, of entry into premises for the purpose of this inspection; if admission be refused an order of justices must be obtained under s. 102. Much misapprehension exists in the minds of some medical officers and inspectors of nuisances on this point. But a great deal of information can be obtained as to the state of the district without compulsory entry into premises. See *Vines* v. *North London Collegiate Schools*, *Consett U. D. C.* v. *Crawford*, and *Wimbledon U. D. C.* v. *Hastings*, cited in the notes to s. 102, *post*, p. 189. *Cf.* a similar duty to make inspection of a district under the Housing, Town Planning, etc. Act, 1909, s. 17 (1), *post*, Vol. II.

(*c*) That is, any local Act. The previous section requires smoke to be consumed, but some local Acts contain special provisions on the subject. See the Towns Improvement Clauses Act, 1847, s. 108, and *Willcocks* v. *Sands* and *Chisholm* v. *Doulton*, in note (*l*) to s. 91, *ante*, p. 171.

Information of nuisances to local authority.

93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

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The statute does not point out how notices are to be given to or served upon the authority, but generally notices should be in writing and addressed to the authority under their proper title, and served at their office upon their clerk. If the authority appoint any other officer to receive notices for them, the notice may be delivered to him. For forms of notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 471.

Local authority to serve notice requiring abatement of nuisance.

94. On the receipt of any information respecting the existence of a nuisance the local authority shall (*a*), if satisfied of the existence of a nuisance, serve a notice (*b*) on the person by whose act default or sufferance the nuisance arises or continues (*c*), or, if such person cannot be found, on the owner (*d*) or occupier of the premises on which the nuisance arises, requiring him to abate the same (*e*) within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose (*f*): Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner (*g*):

Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further (*h*) order.

(*a*) This word is imperative, and imposes a duty upon the local authority.

Notices.

(*b*) See the forms of this notice in Sched. IV., Form A., *post*, and in the Encyclopædia of Forms and Precedents, Vol. X., at p. 472; and as to authentication and service of such notice, see ss. 266, 267, *post*. Observe that the notice must be given by the authority, or at least by their direction; it cannot be given by an officer on his own initiative. See *St. Leonard's, Shoreditch (Vestry of)* v. *Holmes* (1885), 50 J. P. 132, and *Bowyer, Philpott and Payne, Ltd.* v. *Mather*, [1919] 1 K. B. 419; 83 J. P. 50.

The public health committee of a metropolitan vestry (duly appointed under s. 58 of the Metropolis Management Act, 1855), directed their officer to serve a nuisance notice in respect of a drain, and in case of non-compliance therewith, to issue a summons. After the issue, but before the hearing, of such summons, the vestry approved the committee's acts:—*Held*, a sufficient approval or ratification to support the summons (*Firth* v. *Staines*, [1897] 2 Q. B. 70; 61 J. P. 452; followed in *R.* v. *Chapman*, [1918] 2 K. B. 298; 82 J. P. 229).

A local authority exercises its discretion where a committee has considered a matter and reported and the report is adopted. See *Agnew* v. *Manchester Corporation*, and *Bower* v. *Caistor R. D. C.*, p. 97, *ante*.

Person to be served.

(*c*) The owner or occupier is not to be served as such if the person by whose act, default, or sufferance the nuisance arises can be found (*Richmond Union* v. *Dean and Chapter of St. Paul's* (1868), 32 J. P. 374; 18 L. T. 522). But it is not always easy to decide as between owner and occupier which of them should be treated as liable for the nuisance as the person by whose act, default, or sufferance it has arisen. The following cases may be referred to as indicating the principles which should be followed in deciding the question. If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term. He is also liable if he lets a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur from want of such care on the part of the tenant. If a party buy

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a reversion during the tenancy, and the tenant afterwards, during his term, erect a nuisance, the reversioner is not liable for it; but if such reversioner re-let, allowing the nuisance to continue, he is liable for such continuance. And such purchaser is liable to be indicted for the continuance of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest or abating the nuisance (*R.* v. *Pedly* (1834), 1 A. & E. 822; 3 L. J. M. C. 119. See also *Todd* v. *Flight* (1860), 9 C. B. (N.S.) 377). It would seem to follow that when an owner or reversioner would be liable to be indicted for a nuisance, and is, therefore, to be regarded as the person by whose act, default, or sufferance the nuisance arises or continues, the authority may proceed against him under this part of the section. But of course, it does not follow that the tenant may not also be a person by whose act, etc. the nuisance arises. Thus, in *Russell* v. *Shenton* (1842), 3 Q. B. 449, it was held that the occupier and not the owner was primâ facie liable for damages for a nuisance consisting of defective drains; and the principle thus laid down appears to be of general application, although the proviso in the latter part of this section might possibly apply to the case of drains defective in point of construction. See also *per* PARKE, B., in *Chaunler* v. *Robinson* (1849), 4 Exch., at p. 169. And it has been held that if the lessee of property proceeding by the licence of the lessor performs acts which amount to a nuisance, both of them are liable at law and in equity (*White* v. *Jameson* (1874), L. R. 18 Eq. 303; 38 J. P. 694). If, however, the acts which cause a nuisance are executed by a lessee for his own benefit, and not for or by the direction of the owner, it would appear by analogy from a Canadian decision that the owner will not be liable (*Kieffer* v. *Le Séminaire de Québec*, [1903] A. C. 85; and see also *Malzy* v. *Eichholz*, [1916] 2 K. B. 308; 32 T. L. R. 506). In *Broder* v. *Saillard* (1876), 2 Ch. D. 692, it was held that the occupier of a house is liable for allowing the continuance on his premises of any artifical work which causes an injury to a neighbour, even though it has been put there before he took possession. *Broder* v. *Saillard*, *supra*, was followed in *Reinhardt* v. *Mentasti* (1889), 42 Ch. D. 685. And see *Tarry* v. *Ashton* (1876), 1 Q. B. D. 314; 40 J. P. 439; *Silverton* v. *Marriott* (1888), 52 J. P. 677; 59 L. T. 61. In *Gandy* v. *Jubber* (1864), 5 B. & S. 78; (1865), 29 J. P. 645; 9 B. & S. 15, the tenancy was from year to year, and the Court of Queen's Bench held that the landlord might have re-entered at the end of each year, and that he was, therefore, liable for the consequences resulting from an accident caused by a grating in front of the house having been for some years in a defective state. In the Exchequer Chamber this decision was overruled on the ground that it proceeded on a misapprehension of the peculiar relations existing between the landlord and tenant in the case of a tenancy from year to year. Such a tenancy requires something to be done between the landlord and tenant in order to determine the tenancy. The same principle applies to a weekly tenancy. See *Bowen* v. *Anderson*, [1894] 1 Q. B. 164; 58 J. P. 213, disapproving a contrary decision in *Sandford* v. *Clarke* (1888), 21 Q. B. D. 398; 52 J. P. 773. And see *Winter* v. *Baker* (1887), 3 T. L. R. 569. A dictum of LITTLEDALE, J., in *R.* v. *Pedly*, *supra*, to the effect that if a reversioner allows a nuisance to continue after he might have determined the tenancy he is liable, appears to be overruled by *Gandy* v. *Jubber*, *supra*. See also on this point, *R.* v. *Barrett* (1862), 32 L. J. M. C. 36; *R.* v. *Stannard* (1863), 33 L. J. M. C. 61; 28 J. P. 30. When the nuisance consists of the dangerous condition of the premises demised to the tenant, and the tenant is liable to repair under a covenant, the landlord is not liable in respect of the nuisance, unless he has done some act authorising the continuance of the dangerous state of the premises (*Pretty* v. *Bickmore* (1873), L. R. 8 C. P. 401; 37 J. P. 552. And see *Nelson* v. *Liverpool Brewery Co.* (1877), 2 C. P. D. 311; *Cavalier* v. *Pope*, [1906] A. C. 428; *Malone* v. *Laskey and Another*, [1907] 2 K. B. 141; *Kennedy* v. *Bruce*, [1907] S. C. 845). This rule applies even when the dangerous condition of the premises existed at the time of the demise, the lessee occupying under an obligation to repair (*Gwinnell* v. *Eamer* (1875), L. R. 10 C. P. 658). A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by means of blasting, and A. authorised the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against both A. and B. On demurrer by A., held that he, the landlord, was liable, although the nuisance

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was actually created by the act of his tenant, for the terms of the demise were an authority from him to B, to create the nuisance, which was, therefore, the necessary consequence of the mode of occupation contemplated in the demise (*Harris* v. *James and Another* (1876), 45 L. J. Q. B. 545). The court characterised the previous case of *Rich* v. *Basterfield* (1847), 4 C. B. 783, as one of excessive refinement. There A., the owner of a house with a fireplace and chimney, demised it to a tenant from week to week. The tenant lighted fires, and from the position of the chimney the emission of the smoke was a nuisance to B., the owner of the adjoining house. More than one week elapsed, during which A. did not determine the tenancy. In an action by B. against A. it was held that A. was not liable, as the tenant might by burning coke, or by abstaining from lighting fires, or in some similar way, have used the premises without creating a nuisance. The owner is, of course, liable for the existence of a nuisance consisting of or arising out of the non-repair of premises when he has taken upon himself the duty of repairing (*Leslie* v. *Pounds* (1812), 4 Taunt. 649; *Payne* v. *Rogers* (1794), 2 H. Bl. 350); or where the lessee is bound by his agreement to do the act which leads to the damage or matter of complaint (*Burt* v. *Victoria Graving Dock Co., Ltd.* (1882), 47 L. T. 378), for in this case the lessee resembles an agent of the lessor for the purpose of such act. As to the liability of a landlord for a nuisance caused on the demised premises by damage done without his knowledge by a trespasser, see *Barker* v. *Herbert*, on p. 167, *ante*. In *Horridge* v. *Makinson* (1915), 84 L. J. K. B. 1294, this case was distinguished. In that case an accident happened by the plaintiff putting her foot into a hole over a coal shoot, and she thereby sustained injuries. In making up the street the highway authority had left this hole over the shoot because of a difference in levels and to allow of the use of the shoot. It was held that the action failed, inasmuch as, where a nuisance is created by a highway authority on a highway under their control, the owner or occupier of the land adjoining the highway is not liable for an accident caused by the nuisance.

It is submitted that in general the occupier, and not the owner, is the person by whose act, default, or sufferance a nuisance consisting of overcrowding arises; and it has been so decided in Scotland. See *Home* v. *Kelso Local Authority* (1876), 3 Coup. 239. And see *R.* v. *Mead, Ex parte Gates, infra.*

The foregoing remarks apply only with reference to the question, who is the person to whom notice should or may be given? They do not affect any question of liability as between landlord and tenant; as to which see s. 104, *post*, p. 189.

Where sheep were penned in pens fixed on a highway by the owner of a market who received tolls in respect thereof, it was held that the droppings left on the site constituted a recurring nuisance which arose from his default, permission, or sufferance, for which he was liable (*Draper* v. *Sperring* (1861), 25 J. P. 566; 10 C. B. (N.S.) 113).

But a lord of a manor was held not to be liable in respect of a filthy pond on a manorial common which was managed and regulated by conservators appointed by the copyhold jury and tenants (with the assent of the lord) at the court baron (*Richmond Union* v. *Dean and Chapter of St. Paul's* (1868), 32 J. P. 374; 18 L. T. 522).

A harbour company were held to be the person through whose default a nuisance from accumulation of seaweed in the harbour arose or continued (*Margate Pier and Harbour Proprietors* v. *Margate Town Council* (1869), 33 J. P. 437; 20 L. T. 564).

Where a chapel was used as a shelter for destitute persons and orders as to the number of persons to be admitted were given by the superintendent of the philanthropic work of the religious association owning the chapel to the caretaker, apparently on his own responsibility:—*Held*, that the superintendent was the person by whose act, default, or sufferance a nuisance consisting in the overcrowding of the chapel at night arose (*R.* v. *Mead, Ex parte Gates* (1895), 64 L. J. M. C. 169; 59 J. P. 150).

B. drained his premises into a barrel drain, which also received the sewage of other premises. This drain passed for about 300 yards under a turnpike road, and thence the sewage was conveyed by an open drain through certain land not belonging to B. and ultimately into an open drain about half a mile from B.'s premises, by the side of a road on land not B.'s. This open drain was a nuisance, the matter

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from B.'s premises in itself being sufficient to cause a nuisance. On complaint, the justices ordered B. to abate the nuisance by cutting off all communication from his premises to the barrel drain. F. was the owner of six houses let to tenants. He had constructed a drain from the houses under land not his own by leave of the owner, by which the sewage was conveyed into and along a watercourse, and the accumulation at the mouth of the drain was a nuisance. On complaint, the justices ordered F. to abate the nuisance:—*Held*, that the orders were rightly made on B. and F., for that they were the persons by whose acts respectively the nuisances arose. In proceedings under the Act, the question whether or not the persons against whom the proceedings are taken have a legal right to cause their sewage to flow in the given channel, etc. is immaterial (*Brown* v. *Bussell*; *Francombe* v. *Freeman* (1868), L. R. 3 Q. B. 251; 32 J. P. 196). See, however, the observations of MATHEW, J., on *Brown* v. *Bussell* in *Fordom* v. *Parsons*, *ante*, p. 51, and see *Kirkheaton L. B.* v. *Beaumont*, and *Kinson Pottery Co.* v. *Poole Corporation*, *ante*, p. 30.

Brown v. *Bussell*, *supra*, was followed in *Wincanton R. D. C.* v. *Parsons*, [1905] 2 K. B. 34; 69 J. P. 242. P. had for some years discharged the sewage from his house into a pipe running alongside a country road. After passing along this pipe for some 260 feet the sewage was discharged into a catchpit, and continued from such catchpit for seventy feet under a highway under the control of a rural district council to a point where it was joined by a drain from another house, and subsequently after passing through private property, emptied into a stream. The catchpit and pipe therefrom up to the point of junction with the second drain were made by the tenant of other property to prevent surface water from the highway overflowing thereon. The pipe up to the point where it was joined by the second drain carried sewage from P.'s premises only, but from the catchpit onwards it carried off also the surface water from the highway. The authority had never repaired the pipe or treated it as a sewer. The portion of pipe leading from the catchpit had been broken where it passed under the highway at a distance of six feet from the catchpit, and the sewage collected and caused a nuisance. On proceedings against P. as "the person by whose act, default or sufferance the nuisance arose," it was held that it was no defence upon proceedings under s. 94 to show that the pipe was a sewer which the authority were liable to repair. See the observations on this decision at p. 151, *supra*.

Where there was a flow of sewage from several houses without appreciable damage from any one house, but the accumulation caused a nuisance on other properties, the occupiers of each of the houses were held to be liable (*Hendon Union* v. *Bowles* (1869), 34 J. P. 19; 20 L. T. 609). This decision appears to answer a query left undecided in *Brown* v. *Bussell*, *supra*. And see *Lambton* v. *Mellish*, [1894] 3 Ch. 163; 58 J. P. 835.

The plaintiff and the defendants occupied adjoining houses, and the defendants had the right of sending sewage from their house through a pipe under the plaintiff's house into the main sewer. Twelve feet of this pipe was used solely to convey sewage from the defendants' premises. Proceedings under ss. 4 and 5 of the Public Health (London) Act, 1891, were taken against the plaintiff for a nuisance arising from the pipe being defective and a magistrates' order was obtained. The plaintiff thereupon did the required repairs to the pipe, including the said portion of twelve feet, and brought an action in the county court to recover contribution under s. 120 (3) of that Act, which provides that when some only of the persons by whose act or default, etc. have been proceeded against, they shall, without prejudice to any other remedy, be entitled to recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of and incidental to such proceedings, and abating such nuisance, and of any fines, etc. The county court judge found that there was no evidence to show that the defendants were liable to repair or make good the drain; and he therefore held that the nuisance was not caused by any act or default of the defendants, and gave judgment for them. It was held, on appeal, that, as there was no evidence of any obligation on the defendants to repair any portion of the pipe on the premises occupied by the plaintiff, the decision was right (*Nathan* v. *Rouse*, [1905] 1 K. B. 527; 69 J. P. 135. See also *Reeve* v. *Sadler* on p. 205, *post*).

As to the liability of the occupier of a factory or other works for a nuisance arising

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out of smoke, though the same may be caused by his workmen, see the cases mentioned in note (*l*) to s. 91, *ante*, p. 171.

Incidence of cost as between landlord and tenant—*cont.*

The appellant's landlord made a sewer under land let by him to the appellant without obtaining his consent. Pecuniary compensation was claimed at the time, but for two years the sewage of several houses passed through the sewer. At length the appellant, being unable to get satisfaction, stopped up the sewer, and the local board obtained a conviction against him under the above section, and s. 96, *post*, p. 182, although no nuisance existed on his land:—*Held*, that the appellant was a person by whose act the nuisance arose or continued, and that he was rightly convicted (*Riddell* v. *Spear* (1879), 43 J. P. 317; 40 L. T. 130).

The drainage from a gaol in the township of W., which is outside the borough of L., built there by the corporation of L., and duly declared to be the common gaol of the borough, was carried thence by open drains over land in the township of B. not belonging to the corporation, and caused a nuisance in B. The corporation of L. was thereupon summoned by the nuisance removal committee of B. under 18 & 19 Vict. c. 121. It was held that the corporation of L. and not the justices having the management of the gaol were the proper persons to be summoned, and they were ordered to do what was necessary under that Act (*Ex parte Mayor, etc. of Liverpool* (1857), 27 L. J. M. C. 89; 22 J. P. 562).

When a nuisance is caused by sewage works belonging to a local authority, the authority cannot be proceeded against under this part of the Act as the person by whose act, etc. the nuisance arises (*R.* v. *Parlby* (1889), 22 Q. B. D. 520; 53 J. P. 327).

In cases of defective drains a question often arises whether the drain complained of is a drain or a sewer as defined by s. 4. In the latter case the liability is not on the person on whose premises the defect is. See the notes to s. 4, *ante*, pp. 24, 26, and s. 23, *ante*, p. 83. See also *Fordom* or *Wycombe Union* v. *Parsons*, [1894] 2 Q. B. 780; 58 J. P. 765, the facts of which are set out, *ante*, p. 51. *Cf.*, however, *Wincanton R. D. C.* v. *Parsons*, *ibid.* Where, however, a drain has become a sewer by reason of its receiving the drainage of more than one house, yet, as between the local authority and the builder, who on the passing of his plans undertook that the drain should, for all purposes of the Public Health Acts, be a private drain, and that it and a cesspool into which the drainage flowed should be cleansed and maintained by him, the builder will still be the person by whose act or default the nuisance arises if a nuisance exists at the cesspool from the overflowing therefrom of sewage, although third parties might have a right to say that as between them and the authority the drain had vested in the authority as a sewer, and that the authority were liable to abate the nuisance (*per* CHANNELL, J., in *Butt* v. *Snow* (1903), 67 J. P. 454; 89 L. T. 302).

An authority which has taken upon itself under s. 42, *ante*, p. 107, the cleansing of privies belonging to cottage property, but has, after notification of an outbreak of typhoid fever, failed to eradicate fever germs which have penetrated crevices in the brickwork and cause a nuisance, cannot under s. 94 call upon an owner of the property to abate the nuisance by abolishing privies and substituting water-closets (*Barnett* v. *Laskey* (1898), 68 L. J. Q. B. 55; 63 J. P. 5).

An important sewer belonging to the defendants passed along a lane near a pond; an overflow pipe for storm water communicated with a watercourse which fed the plaintiff's pond and conveyed sewage from the sewer to the watercourse, thus polluting the pond. The plaintiff recovered damages (*Smith and Taylor* v. *King's Norton R. D. C.* (1896), 60 J. P. 521).

Serving owner *or* occupier.

(*d*) See the definition in s. 4, *ante*, p. 8. A mere rent collector is within that definition, and may be served with notice to abate a nuisance, although arising from structural defects (*Broadbent* v. *Shepherd* (1900), 65 J. P. 70; 83 L. T. 504). And an order may be made upon him under s. 96, *post* p. 182, although he has resigned his post since service of the notice to abate (*Broadbent* v. *Shepherd* (No. 2), [1901] 2 K. B. 274; 65 J. P. 499). Note that it is only when the person by whose act, etc. the nuisance arises cannot be found, that the notice may be served on the owner or occupier as such. The authority may serve either, subject to the provisoes in the latter part of this section. Where the person causing the nuisance cannot be found, the liability of the owner of premises to abate it only arises where it is

Note to Section 94.

shown that it continues by his act, default, or sufferance (*Thames* (*Conservators of the River*) v. *London* (*Port Sanitary Authority of*), [1894] 1 Q. B. 647; 58 J. P. 335). See *Rhymney Iron Co.* v. *Gelligaer U. D. C.* (1917), 1 K. B. 589; 81 J. P. 86, as to the words "cannot be found."

A notice directed to a person officially in charge of a night shelter that "the premises were so overcrowded as to be injurious or dangerous to the health of the inmates," and a summons and order founded upon such notice, are sufficient to convey to the recipient that the nuisance complained of related to the overcrowding of a "house" or "part of a house," as referred to in the Public Health (London) Act, 1891, s. 2 (1) (e). The temporary occupiers of such night shelters are equivalent to "inmates" of such house (*R.* v. *Slade* (1896), 65 L. J. M. C. 108; 60 J. P. 358).

In determining upon whom the notice should be served, the authority may have to consider whether it is in the power of the person served to comply with it. Where a nuisance existed on the land of A. which had been caused by B., and B. had no power to enter on A.'s land to abate the nuisance, it was held that he could not be ordered to do so (*Scarborough* (*Mayor of*) v. *Scarborough R. S. A.* (1876), 1 Ex. D. 344; 40 J. P. 726). This case was followed in *R.* v. *Trimble* (1877), 41 J. P. 455; 36 L. T. 508, where it was suggested by COCKBURN, C.J., that the order should be made on the owner of the premises where the nuisance exists. But the authority of these cases is seriously shaken by *Parker* v. *Inge* (1886), 17 Q. B. D. 584; 51 J. P. 20. In that case an authority served on the owner of premises a notice under this section requiring him to abate a nuisance arising from the defective construction of a structural convenience, and for that purpose to execute certain specified works. Having failed to comply with the notice, the owner was summoned under s. 95, and on the hearing it was proved that the premises in question were occupied by a tenant under a lease for twenty-one years, containing the usual covenants:—*Held*, that the owner, even although he could not enter upon the premises and execute the works without the tenant's permission, had made default in complying with the requisitions of the notice within the meaning of s. 95, and, therefore, that the justices had jurisdiction to make an order under s. 96, requiring him to abate the nuisance. See also *Broadbent* v. *Shepherd* (No. 2), *ante*, p. 180. The decision in *Scarborough* (*Mayor of*) v. *Scarborough R. S. A.*, *supra*, has, however, been followed in an Irish case (*Letterkenny Commissioners* v. *Collins* (1891), 28 L. R. Ir. 235). *Cf.* also *Arlidge* v. *Islington Borough Council*, on p. 164, *ante*, and *Meyrick* v. *Pembroke Corporation*, p. 85, *ante*.

"Abatement"

(*e*) The abatement of a nuisance may possibly involve the pulling down of the premises where the nuisance consists of overcrowding, and the premises are unfit for human habitation. See *Brown* v. *Biggleswade*, cited at 43 J. P. 554.

Contents of notice.

(*f*) A notice requiring the abatement of the nuisance forthwith after service thereof, sufficiently specifies the time within which the nuisance must be abated (*Thomas* v. *Western Steam Trawling Co.* (1894), 59 J. P. 232). See also *Thomas* v *Nokes* (1868), L. R. 6 Eq. 521.

The authority must, in general, specify in the notice the works which they require to be done. See *R.* v. *Wheatley* (1885), 16 Q. B. D. 34; 50 J. P. 424; *R.* v. *Horrocks* (1900), 64 J. P. 661; 82 L. T. 767; *Whatling* v. *Rees* (1915), 79 J. P. 209; and cases cited in notes to s. 96, *post*, p. 182. But a notice to abate a nuisance caused by quantities of black smoke issuing from a factory chimney need not necessarily specify the works required to be done in order to abate the nuisance (*Millard* v. *Wastall*, [1898] 1 Q B. 342; 62 J. P. 135). See also *Central London Rail. Co.* v. *Hammersmith Borough Council* (1904), 73 L. J. K. B. 623; 68 J. P. 217; *Tough* v. *Hopkins*, [1904] 1 K. B. 804; 68 J. P. 271, cited in the notes to s. 96.

Liability for structural defects.

(*g*) See *Cook* v. *Montague*, *ante*, p. 8. The owner as distinguished from the occupier is in all cases to abate a nuisance which arises from structural deficiencies or defective construction. The occupier is not liable under the Act for such defects, whatever may be his contractual responsibilities with his landlord. Such responsibilities are not affected by the Act. See s. 104, *post*, p. 189.

Where notice was served on an occupier, and in the course of the work to abate the nuisance it was found that it was caused by a structural defect, it was held that the occupier could recover the expenses from the owner (*Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452; 56 J. P. 741).

Note to Section 94.

(*h*) This word should have been omitted. In the cases contemplated there has not been any order.

On non-compliance with notice, complaint to be made to justice.

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance although abated since the service of the notice is, in the opinion of the local authority, likely to recur (*a*) on the same premises, the local authority shall (*b*) cause a complaint (*c*) relating to such nuisance to be made before a justice (*d*), and such notice shall thereupon issue a summons (*e*) requiring the person on whom the notice was served to appear before a court of summary jurisdiction (*f*).

(*a*) See *Draper* v. *Sperring*, *ante*, p. 178. See also note (*a*) to the next section.

(*b*) These words are imperative, and the neglect of the local authority will be a default; as to which see s. 299, *post*.

(*c*) It does not appear that this complaint must be in writing. See 11 & 12 Vict. c. 43, s. 8. But it will be safer for it to be in writing, so as to prevent any dispute in the future by the person in alleged default as to the particular matter complained of. As to the limitation of time, see s. 252, *post*. The time will, of course, in the first place run from the default to which the section applies; but it is not so clear when the matter of complaint arises in the second.

A complaint under this section cannot be made the basis of an action for malicious prosecution against the officer who laid it and the council who directed him to do so (*Wiffen* v. *Bailey and Romford U. D. C.*, [1915] 1 K. B. 600; 79 J. P. 145).

(*d*) See as to his competency, s. 258, and the notes thereon (*post*).

(*e*) See the form of the summons in Sched. IV., Form B. Justices may, in the exercise of their discretion, refuse to issue a summons, even if there be evidence of the offence before them, if they consider that the issue of a summons would be a vexatious and improper proceeding (*R.* v. *Bros* (1901), 66 J. P. 54).

(*f*) See the definition, *ante*, p. 36.

Power of court of summary jurisdiction to make order dealing with nuisance.

96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur (*a*) on the same premises, the court shall (*b*) make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose (*c*); or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence (*d*); or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made (*e*), and shall also give directions (*f*) as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance.

(*a*) Upon the summons mentioned in the last section, the court may make an order as provided in this section. In *Barnes* v. *Akroyd*, *ante*, p. 172, BLACKBURN, J., said that the justices had stopped too soon in their investigations, for after first ascertaining whether a nuisance had been proved to exist, they should have proceeded further to inquire if such nuisance were likely to recur.

(*b*) This is imperative; still if the defendant undertake to abate the nuisance, it is presumed that the court may adjourn the case to observe the result of the undertaking.

As to the appearance of the local authority in court, see s. 259, *post*.

Note to Section 96.

(*c*) The form of order is given in Sched. IV., Form C., *post*. It was held that it must be signed by two justices (*Wing* v. *Epsom U. D. C.*, [1904] 1 K. B. 798; 68 J. P. 259), but since the date of this decision the Lord Chancellor has prescribed forms of convictions and orders under the powers conferred by the Criminal Justice Ad. Act, 1914, and by rule 53 of the S. J. Rules, 1915, it is provided that in every case of an order made by justices it shall be sufficient if it is signed and sealed by one justice. In *R.* v. *Down JJ.*, [1905] 2 I. R. 648, it was held that when justices make an order for the abatement of a nuisance, under s. 112 of the P. H. (Ireland) A., 1878, the order of the justices is not the entry in the order book, but the document drawn up in accordance with Form C. in Sched. (C.) of the Act, and that if the order so drawn up is good in form, its validity is not affected by the fact that the entry in the order book would be bad on its face as an order. The point was also raised, but not decided, whether, when such an order is made by more than two justices, all must sign it or whether signature by two justices is sufficient. In *R.* v. *Londonderry JJ.*, [1910] 2 I. R. 458, three out of five justices decided to make an abatement order. An order, drawn up several days later, was signed by one member of the majority and one member of the minority. Upon a rule being obtained to quash it, the other two members of the majority signed it:—*Held* (1) that the order required signature by a majority of the adjudicating justices, but (2) that the omission did not go to jurisdiction, and could be corrected afterwards, and (3) that the delay in signing and completing the order did not warrant the issue of a *certiorari*.

Form and contents of order.

In *Ex parte Whitchurch* (1881), 6 Q. B. D. 545; 45 J. P. 392, a privy and ashpit being a nuisance, notice was given to abate it and for that purpose to fill up the ashpit, abandon the privy, and build a pail closet. On default justices made an order under this section in the terms of the notice. The court quashed the order on the ground that the owner could not be compelled to put up a particular kind of closet. STEPHEN, J., said that the question turned upon the word *necessary*, which could not be extended to mean what the authority thought necessary. But in *Ex parte Saunders* (1883), 11 Q. B. D. 191; 47 J. P. 404, a water-closet in the centre of a house being a nuisance, the authority gave notice to the owner to abate the nuisance, and for that purpose to remove the closet from the centre of the house, and place it near an outer wall, where there might be efficient ventilation, and to fix the soil-pipe outside the wall. The owner having made default, an order was made under this section to do the things specified. It was held that the justices had jurisdiction to make the order. The court (CAVE and A. L. SMITH, JJ.) intimated that *Ex parte Whitchurch* was distinguishable, on the ground that the order was not for the erection of a particular kind of closet where none existed before, but for the removal of a closet to a place where it would not be a nuisance. In *R.* v. *Llewellyn* (1884), 13 Q. B. D. 681; 49 J. P. 151, a privy openly discharged night soil and offensive matter on the bank of a river. The sanitary authority served on the owner of the premises notice to abate the nuisance, and for that purpose to "remove the present pipes and pan, level the floor under the seat of the privy, and provide a galvanised double-handled pail under the seat, the cover of the said seat to be movable, so that the said premises should no longer be a nuisance or injurious to health." The justices made an order in the terms of the notice, and it was held they had jurisdiction to do so. The court adopted the decision in *Ex parte Saunders*, saying that if it differed from *Ex parte Whitchurch* they differed also. After this decision it was clear that the cases were in conflict; and accordingly when the point again arose it was ordered to be argued before three judges. It appeared that an order had been made requiring the appellant, *inter alia*, to lay down a six-inch glazed stoneware drain pipe, and to connect it with the main sewer in front of his house. FIELD MANISTY and WILLS, JJ., held that there was jurisdiction to make the order, and overruled *Ex parte Whitchurch* (*R.* v. *Kent JJ.* (1885), 55 L. J. M. C. 9; 49 J. P. 404). In *Whitaker* v. *Derby Urban Sanitary Authority* (1885), 55 L. J. M. C. 8; 50 J. P. 357, the respondents served on the owner of houses to which were attached privies and ashpits, which were a nuisance, a notice requiring him to abate the nuisance, and "for that purpose to deodorise and fill in the privies, privy vaults and ashpits, convert the same to proper pan water-closets, and connect them with the main sewer." This notice was not complied with, and an order was thereupon made by justices in the terms of the notice. It was held that the order was good, as the above section left it absolutely

Specification of works required.

Note to Section 96.

to the justices to order any works or structural alterations which they in their discretion might think necessary for the abatement of the nuisance. In *R.* v. *Wheatley* (1885), 16 Q. B. D. 34; 50 J. P. 424, an order of justices requiring the owner of premises to abate a nuisance arising from untrapped drains, and "to execute such works and do such things as may be necessary for that purpose, so that the same shall no longer be a nuisance or injurious to health," was held bad, because it did not specify what works and things the owner should execute and do for the purpose of abating the nuisance. This case was followed in *R.* v. *Meath JJ.* (1899), 34 Ir. L. T. 47. An order of justices "to take such steps as may be necessary to abate a nuisance arising from an accumulation of slaughter-house offal and filth in fields, so that the same shall no longer be a nuisance or injurious to health," was held bad as to the part which dealt with the abatement of the nuisance, as it did not specify the work necessary, but good as to the part which prohibited the recurrence of the nuisance, as in preventing such recurrence there was no necessity to do any work at all (*R.* v. *Horrocks* (1900), 69 L. J. Q. B. 688; 64 J. P. 661). In *Whatling* v. *Rees* (1915), 79 J. P. 209; 13 L. G. R. 274, the flooding of a cellar arising from a spring caused a nuisance, and a notice to abate the same by draining off the water and filling in the cellar, etc., was held bad in law; it being ambiguous as it might mean either that the appellant was to drain off the water which was then in the cellar or that he was to drain off the water effectively so as to prevent it coming in again. A notice to abate a nuisance caused by quantities of black smoke issuing from a factory chimney need not necessarily specify the works required to be done in order to abate the nuisance (*Millard* v. *Wastall*, [1898] 1 Q. B. 342; 62 J. P. 135). This case was followed in a case under the P. H. (London) A., 1891 (*Central London Rail. Co.* v. *Hammersmith Borough Council* (1904), 73 L. J. K. B. 623; 68 J. P. 217). Under s. 5 (5) of the London Act it is provided that "an abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance," but notwithstanding this provision and that a request to specify works has been made, it has been held that it is not necessary for the justices to specify the works in an abatement or prohibition order when the nuisance complained of is one arising from black smoke, if there is no necessity for works in order to prevent the nuisance, *e.g.*, if the only remedy be proper stoking (*Central London Rail. Co.* v. *Hammersmith Borough Council, supra*; *Tough* v. *Hopkins*, [1904] 1 K. B. 804; 68 J. P. 274).

Severability of order.

(*d*) An order may be good as to the prohibition, though bad as to the abatement. See *Scarborough* (*Mayor of*) v. *Scarborough R. S. A.*, *ante*, p. 181; *R.* v. *Horrocks*, *supra*.

Appeal.

An order made under this section is an order made in a criminal cause or matter within the meaning of the Judicature Act, 1873, s. 47, and when the King's Bench Division has granted a *certiorari* to quash the order, an appeal will not lie to the Court of Appeal (*R.* v. *Whitchurch* (1881), 7 Q. B. D. 534; 45 J. P. 617). In another case, upon a complaint as to a factory chimney sending forth black smoke, so as to be a nuisance within s. 91 (7), the magistrate convicted, and refused to state a case. The High Court, having refused to grant a rule to the magistrate to state a case, it was held that the proceedings were criminal, and that no appeal lay to the Court of Appeal (*Ex parte Schofield*, [1891] 2 Q. B. 428; 56 J. P. 4), and see *R.* v. *D'Eyncourt* (1901), 18 T. L. R. 53).

An order of justices under 18 & 19 Vict. c. 121, s. 13, was without appeal to the quarter sessions (*Ex parte Corporation of Liverpool* (1857), 22 J. P. 562; 8 El. & Bl. 537); but now s. 269, *post*, allows of an appeal to sessions, and s. 99, *post*, p. 187, suspends proceedings in that event. For a case where the right to appeal was lost by part acceptance of the notice and part performance of the works required therein during repeated adjournments of the hearing, see *R.* (*Sherburn*) v. *Cork JJ.* (1908), I. L. T. 247.

A court of summary jurisdiction made an order under this section, upon an owner of premises to comply with a notice served upon him by the authority requiring him to abate a nuisance. Quarter sessions dismissed an appeal against the order, but stated a case. The High Court ordered that the order of quarter sessions should be quashed, and instead thereof judgment entered for the owner, and that the authority should pay to the owner the costs of the two appeals. These costs were taxed, and

paid to the owner by the authority. The expenses incurred by the owner in prosecuting the appeals exceeded the costs so paid to him. All the expenses incurred by the owner throughout the proceedings were reasonably and properly incurred:—*Held*, that the owner's expenses of the proceedings in the court of summary jurisdiction, and the difference between his costs taxed as between party and party and his actual expenses of the two appeals, were not damage for which he was entitled to compensation under s. 308, *post* (*Barnett* v. *Eccles* (*Mayor, etc. of*), [1900] 2 Q. B. 423; 64 J. P. 692). **Note to Section 96.**

(*e*) It is to be noticed that the form in the schedule does not provide for this penalty. The provision is new, and the imposition of the penalty is discretionary. Penalty discretionary.

It is not quite clear whether this penalty is for the previous nuisance, or for disobedience of the notice of the authority. It cannot be for disobedience of the justices' order, for that was not then made. It seems, however, if the two sections, 95 and 96, be read together, that the penalty is for non-compliance with the notice, inasmuch as complaint cannot be made to the justices until the person served with notice is in *default*.

Appellants, acting under the corresponding section (s. 4) of the Public Health (London) Act, 1891, gave notice to the respondent in March, 1904, forthwith to abate, and within the like period to prevent the recurrence of, a nuisance consisting of black smoke issuing from the chimney of a bakehouse. No further nuisance was observed till January, 1906, when the chimney was seen to send forth black smoke in such a quantity as to be a nuisance. The appellants thereupon summoned the respondent for making default in complying with the notice of March, 1904. The magistrate found upon the evidence that immediately on receipt of the notice the nuisance was abated, and that the matter now complained of was a separate and independent occurrence, and he dismissed the summons:—*Held*, that it was open to the magistrate to find that the two occurrences were not connected with one another, and that his decision must stand (*Battersea Borough Council* v. *Goerg* (1906), 71 J. P. 11; 5 L. G. R. 62). For a similar decision where the interval was six months, see *Greenwich Borough Council* v. *London C. C.* (1912), 76 J. P. 267; 106 L. T. 887.

No penalty can be imposed in cases coming within the first proviso to s. 91, *ante*, p. 165.

(*f*) It is presumed that this must be by an order, but the form in the schedule does not provide for these costs. It has been held in Ireland under similar sections that the justices must determine the amount of costs "reasonably" incurred, and have no discretion to award a less sum (*Mullingar R. D. C.* v. *Greville* (1906), 41 Ir. L. T. 144). Costs.

97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the court (*a*) being satisfied that it has been rendered fit (*b*) for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited. Order of prohibition in case of house unfit for human habitation.

(*a*) By the use of this word the difficulty in 18 & 19 Vict. c. 121, s. 13, is avoided. It is not now necessary that the same justices should act. The statute does not indicate any mode of procedure. Presumably an application is to be made to the court, and previous notice should be sent to the authority.

(*b*) See the provisions in s. 157, *post*, p. 327, as to byelaws regarding houses unfit for human habitation. Such byelaws are restricted to houses erected within the period specified, but this section applies to ancient as well as modern houses.

See also the provisions of the Housing, Town Planning, etc. Act, 1909, ss. 17—21, *post*, Vol. II., as to the closing and demolition of premises which are in a state so dangerous or injurious to health as to be unfit for human habitation.

Section 98.

Penalty for contravention of order of court.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default (*a*); and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover, the local authority may (*b*) enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a summary manner (*c*) the expenses incurred by them from the person on whom the order is made.

Offences against abatement and prohibition orders.

(*a*) Upon an information against H. for a nuisance arising through a chimney sending forth black smoke, an order was made on July 20th, 1868, that within two months he should make such alterations in the said chimney as to consume the smoke arising therefrom. He thereupon made certain alterations, and black smoke ceased to issue until the 4th of the following February, when for a certain limited period on that day and the following days it again issued. In the following July an information was laid for disobedience of the order. No evidence was given as to the cause of the issuing of the smoke, and the justices convicted H.:—*Held*, first, that there was evidence justifying the conviction; and, secondly, that as the nuisance was a continuing one, 11 & 12 Vict. c. 43, s. 11, did not apply (*Higgins* v. *Northwich Union* (1870), 34 J. P. 806; 22 L. T. 752; see, however, *Battersea Borough Council* v. *Goerg*, and *Greenwich Borough Council* v. *London C. C.*, *ante*, p. 185). But s. 11 applies to this extent, viz.: penalties in respect of a continuing offence cannot be imposed for a greater period than six months prior to the issue of the summons for the recovery thereof (*R.* v. *Slade*, [1895] 2 Q. B. 247; 59 J. P. 471). A conviction which inflicts future daily penalties is bad; but that part of a conviction can be separated from the rest of the conviction (*Mayor, etc. of Scarborough* v. *Scarborough R. S. A.* (1876), 1 Ex. D. 344; 40 J. P. 726; *Chepstow Electric Light, etc. Co.* v. *Chepstow Gas, etc. Co.*, [1905] 1 K. B. 198; 69 J. P. 72).

When an abatement order was persistently disregarded, nineteen separate informations were laid, and the same number of summonses issued in respect of as many acts of disobedience, each committed on a different day, by sending forth black smoke. At the hearing, the full penalty of 10*s.* was imposed for the offence alleged in each summons, and the offenders were also ordered to pay 15*s.* costs on the first summons, and 16*s.* costs upon every other They objected that their disobedience was but one default, and that the divers acts complained of should have been charged in a single summons, to which only one set of costs would have attached; and they obtained a rule calling on the justices to state a case:—*Held*, that each daily emission of smoke was a separate act of disobedience, for which a separate summons might be lawfully issued, and that under the circumstances the justices had not so exercised their discretion in awarding costs as to render the interference of the court necessary (*R.* v. *Waterhouse* (1872), L. R. 7 Q. B. 545; 36 J. P. 471).

Black smoke having issued from a chimney in such quantities as to be a nuisance, an abatement order was made. Subsequently, black smoke having again issued from the chimney, an order was made prohibiting the recurrence of the nuisance. Two informations having been laid, one in respect of each order, but both founded on the same emission of smoke:—*Held*, that the act complained of being the same in each case, there could not be two convictions in respect of it (*Eddleston* v. *Barnes* (1875), 1 Ex. D. 67; 40 J. P. 88).

A summons must be issued to the defendant before this penalty can be enforced (*R.* v. *Jenkins* (1862), 26 J. P. 775; 3 B. & S. 116).

It would seem from *Parker* v. *Inge*, *ante*, p. 181, that an owner ordered to abate a nuisance would not be liable to a penalty if he proved that he had no power to enter upon the lands where the nuisance was, and had been refused admission. As

to whether under such circumstances the order should be made upon him at all, see also the other decisions there cited. **Note to Section 98.**

Justices made an order on P. to cleanse a drain; P. did not obey the order and the local board refused to take any steps to enforce it:—*Held*, that the party aggrieved was not entitled to a *mandamus* to the local board to compel them to abate the nuisance under the corresponding provisions of the Nuisances Removal Act, 1855, s. 14 (*Ex parte Bassett; In re West Ham L. B.* (1857), 21 J. P. 85; 7 El. & Bl. 280). This case was decided, however, before the passing of the Sanitary Act, 1866, s. 49 of which appears in this Act as s. 299, and provides for default by a sanitary authority in enforcing the provisions of this Act. And see also the Housing of the Working Classes Act, 1885, s. 7, *post*, Vol. II., which provides that it shall be the duty of every local authority to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to procure the proper sanitary condition of all premises within the area under their control. Default of local authority to enforce order.

(*b*) Although this clause gives a right of entry upon default, yet, if admission be refused, a justices' order under s. 102, p. 188, *post*, will apparently be necessary. When an order was made under the corresponding provisions of 18 & 19 Vict. c. 121, upon an owner to abate a nuisance, and, in his default, upon the local authority, he was held liable to the penalty for default, though the authority failed to act under the order (*Tomlins* v. *Nuisance Removal Company of Great Stanmore* (1865), 29 J. P. 117; 12 L. T. 118). Right of entry.

(*c*) See s. 251, *post*, and note (*e*) to s. 21, *ante*, p. 81.

99. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act (*a*) no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted (*b*). Appeal against order.

(*a*) See s. 269, *post*.

(*b*) It may be difficult in some cases to decide when this time has arrived.

100. Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court may be addressed to and executed by the local authority. In certain cases order may be addressed to local authority.

See the form of the order in Sched. IV., Form D., *post*.

The proviso at the end of s. 94, *ante*, p. 176, applies only where the person causing the nuisance cannot be found, and it is clear that the owner and occupier are not responsible. In that case no order is necessary. But when neither the person causing the nuisance, nor the owner nor the occupier can be found, then an order may be made on the authority under this section.

101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing. Power to sell manure, etc.

See also s. 49, *ante*, p. 117, where, however, a sale by public auction is not required. Sale by auction can hardly be necessary in most of these cases. It is to be noticed that this section applies only to matters or things removed by the local authority in abating a nuisance.

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Power of entry of local authority.

102. The local authority, or any of their officers, shall (*a*) be admitted into any premises (*b*) for the purpose of examining as to the existence of any nuisance thereon (*c*), or of enforcing the provisions of any Act (*d*) in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist or an order of abatement or prohibition has been made (*e*), the local authority or any of their officers shall (*f*) be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall (*f*) be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same (*g*).

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath (*h*) by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given (*i*) to the person having custody of the premises) may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath (*h*) made before him of that fact, by order under his hand authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

(*a*) The section is very wide in regard to the officers, no particular officer being referred to; but as none can enter *compulsorily* against the will of the occupier, without an order of justices, this point will be cleared up by such order. The authority being a corporate body cannot enter of themselves, and should, therefore, depute this function. Members or officers so deputed must not enter premises without obtaining the permission of the occupier or without an order of a justice, if permission has been refused. If they do so enter, and the occupier interferes with them whilst they are upon the premises, no offence will be committed by him under s. 306, *post* (*Consett U. D. C.* v. *Crawford*, [1903] 2 K. B. 183; 67 J. P. 309).

Other powers of entry.

(*b*) As to entry into tents, vans, sheds, or similar structures used for human habitation, see the Housing of the Working Classes Act, 1885, s. 9, *post*, Vol. II.

(*c*) The same right, for the purpose of enforcing orders and regulations as to dairies, cowsheds, and milkshops, is given by the Milk and Dairies (Consolidation) Act, 1915, s. 2, *post*, Vol. II., and for the inspection of water supply in rural districts by the Public Health (Water) Act, 1878, s. 7, *post*.

(*d*) Local Acts in many instances contain such a provision.

(*e*) Under s. 96, *ante*, p. 182.

(*f*) See note (*a*).

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(*g*) The previous paragraph relates to the mere inspection; this to the action of the local authority under the order. See further ss. 105, 106, *post*, p. 205, 206.

(*h*) By 52 & 53 Vict. c. 63, s. 3, in all Acts of Parliament passed after 1850, the expression "oath" includes, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, affirmation and declaration. As to persons entitled to affirm and the circumstances under which they may do so, see the Oaths Act, 1888, and *R.* v. *Moore* (1892), 61 L. J. M. C. 80; 56 J. P. 345; *Nash* v. *Nawab Mahmood Ali Khan* (1892), Times, March 18th.

Oath.

A sanitary inspector who applies for a warrant under s. 115 of the P. H. (London) A., 1891, authorising him to enter premises to which he has been refused admission, must show to the magistrate some reasonable ground for such entry. Merely to show that in seeking admission to premises he is acting honestly with a view to the discharge of his duties, will not suffice (*Vines* v. *North London Collegiate School* (1899), 63 J. P. 244). A magistrate, although he has not to decide the question of the existence of the alleged nuisance, may consider whether there are reasonable grounds for suspecting the existence of a nuisance, and receive evidence for that purpose (*Wimbledon U. D. C.* v. *Hastings* (1902), 67 J. P. 45; 87 L. T. 118). If an order is made it should state that it is in reference to a particular subject-matter (*ibid.*). *Cf. McVittie* v. *Turner* (1916), 80 J. P. 25; 13 L. G. R. 1181.

Grounds of complaint.

(*i*) These words seem to imply personal delivery to the custodian of the premises. For a form of notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 473. There is no provision in respect of empty or unoccupied premises, because there can be no refusal of admission. It is by no means clear whether admission can be forced in respect of such premises, and yet the necessity of the case may often require it.

Notice of complaint.

103. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

Penalty for disobedience of order.

See s. 251, *post*, as to the recovery of such penalty.

104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made (*a*); or if the order is made on the local authority, or if no order is made, but the nuisance is proved (*b*) to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner (*c*) of premises, such costs and expenses may be recovered from any person who is for the time being owner (*c*) of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rack-rent (*d*) of the premises.

Costs and expenses of execution of provisions relating to nuisances.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner (*e*) or in any county (*f*) or superior court; and the court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just (*g*).

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises (*h*); and the owner shall

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allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent (*i*) :

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand (*k*) of such costs or expenses from such occupier, and after notice (*k*) not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier :

Provided also, that nothing herein contained shall affect any contract between any owner or (*sic*) occupier of any house building or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates dues and sums of money payable in respect of such house building or other property, or to affect any contract whatsoever between landlord and tenant (*l*).

(*a*) As the local authority will have paid the money, they will apparently be the proper plaintiffs. See also the provision as to costs in s. 96, *ante*, p. 182.

(*b*) This proof must be given in the action or in the summary proceedings.

(*c*) See the definition in s. 4, *ante*, p. 8. The words "for the time being owner," seem to have been inserted in order to avoid the effect of *Blything Union (Guardians of)* v. *Warton* (1863), 27 J. P. 87 ; 3 B. & S. 352, decided with reference to 18 & 19 Vict. c. 121, s. 19.

Trustees : tenants for life and remaindermen.

Questions frequently arise as to the ultimate incidence of the cost of drainage and paving work done on settled estates. Where trustees have the legal estate in premises, and are entitled for the time being to receive the "rack-rents" thereof, they are "owners" within the meaning of s. 4. See *In re Barney, Harrison* v. *Barney*, [1894] 3 Ch. 562 ; *In re Lever, Cordwell* v. *Lever*, [1897] 1 Ch. 32. But when trustees are "owners" and have executed works, the question as to who must ultimately bear the expense is not easy to determine. In *In re Barney, supra*, trustees incurred expenses for drainage works in respect of houses which were without sufficient drains. It was held that they had rightly paid the expenses out of capital, and that as between the tenant for life and remainderman the capital moneys so applied must be treated as a charge upon the premises. *Cf.*, however, *In re Crawley*, cited on p. 195, *post*, which is apparently at variance with *In re Barney, supra*. In *In re Lever, supra*, where sanitary works were executed under the P. H. (London) A., 1891, upon leasehold houses forming part of a residuary bequest to trustees upon trust for tenant for life and remainderman, it was again held that the cost was payable out of the capital of the residuary estate. A later case would at first sight appear to decide that as between tenant for life and remainderman the cost of complying with a sanitary notice under the P. H. (London) A., 1891, and the Housing of the Working Classes Acts, and a dangerous structure notice under the London Building Act, 1894, was chargeable as against income. See *In re Copland's Settlement, Johns* v. *Carden*, [1900] 1 Ch. 326. If, however, the case is carefully examined it will be seen that the only point decided was that there is no distinction in the position of an equitable tenant for life of leaseholds when the property is sublet at a rack-rent, and when it is sublet at an improved ground rent. It was admitted that the income would be chargeable had not the property been sublet at an improved ground rent. It will be seen from the judgment that the superior lease made the tenant liable to pay for complying with the notices in question, and this perhaps

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distinguishes the case from *In re Lever*, *supra*. The general rule would appear to be that where works have been executed under a notice from a sanitary authority, and the trustees (or the life tenant who has arranged with them to provide the money required) apply to the court to be indemnified out of the estate, it is competent to the court to determine how the expense shall be borne, having regard to the permanent or temporary nature of the work done (*In re Farnham's Settlement*, [1904] 2 Ch. 561; and *cf. In re Thomas, Weatherall* v. *Thomas*, [1900] 1 Ch. 319; *In re Partington, Reigh* v. *Kane*, [1902] 1 Ch. 711; *In re Tubbs, Dykes* v. *Tubbs*, [1915] 2 Ch. 137).

A legal or equitable tenant for life in possession would appear to be the "owner" (*Re Smith's Settled Estates*, [1901] 1 Ch. 689), and, if such a tenant for life pays expenses which have been incurred by an authority, and which constitute a charge upon property by virtue of s. 257, he is entitled to keep the charge alive as an incumbrance on the settled land, and to raise money under s. 11 of the Settled Land Act, 1890, by mortgage of the estate for the purpose of discharging it (*ibid.*). See also *In re Pizzi, Scrivener and Others* v. *Aldridge and Others*, [1907] 1 Ch. 67; 71 J. P. 58, decided under the Private Street Works Act, 1892. In another case expenses incurred by an authority in sewering, paving, and flagging new streets on settled land were charged on the land and made payable, with interest thereon, by instalments. It was held that the expenses so charged were payable out of capital moneys under s. 21 (ii) of the Settled Land Act, 1882; and that the tenant for life was entitled to repayment of instalments already paid by him so far as they represented capital, and that the trustees ought to pay the corresponding portion of the unpaid instalments (*In re Legh's Settled Estate*, [1902] 2 Ch. 274; 66 J. P. 600).

When an equitable tenant for life, by arrangement with the trustees, executes sanitary works he is entitled by subrogation to the rights of the trustees (*In re Farnham's Settlement*, *supra*).

(*d*) See the definition in s. 4, *ante*, p. 15.

(*e*) See s. 251, *post*. The money, if sought to be recovered summarily, will be a civil debt within the meaning of the S. J. A., 1879, ss. 6, 35.

Jurisdiction of county court.

(*f*) See also s. 261, *post*. It was held upon the corresponding section (s. 3) of 11 & 12 Vict. c. 123, that whatever may have been the amount of the costs, and although a question of title to the land on which the nuisance existed arose, the county court had jurisdiction by the express terms of the Act (*R.* v. *Harden* (1854), 2 El. & Bl. 188; *Hertford Union* (*Guardians of*) v. *Kimpton* (1855), 11 Ex. 295; 19 J. P. 678). But that Act provided for the recovery of the costs and expenses in any county court, or before two justices. No reference was made to a superior court as in the text; and it is submitted that while a remedy is provided by this section for the recovery of costs, etc. to any amount, in a summary manner, the county court can only be resorted to when the amount is within its jurisdiction.

(*g*) Apparently this must be done at the risk of the complainants, for if the costs and expenses be divided, some of the defendants may be unable to pay their shares, and there would then, as it seems, be no recourse to the others. Hence the complainants should be heard before the order is made in this form.

Remedy against occupier.

(*h*) In *Bermondsey* (*Vestry of*) v. *Ramsey* (1871), L. R. 6 C. P. 247; 35 J. P. 567, it was held with respect to a similar clause in 25 & 26 Vict. c. 102, s. 36, that an unsatisfied judgment against the *owner* for paving expenses was no bar to an action for the same expenses against the occupier. So also as to proceedings against a subsequent owner, *Plumstead Board of Works* v. *Ingoldby* (1873), L. R. 8 Ex. 63, 174; 37 J. P. 759, and cases cited in the notes to s. 257, *post*. The text applies only to costs and expenses which the authority are entitled to recover from the owner under the preceding sections. Therefore, expenditure by a tenant in abating a structural nuisance pursuant to a magistrate's order after notice to abate served on the tenant only cannot be set off against rent due to the landlord (*Butcher* v. *Ruth* (1887), 22 L. R. Ir. 380).

(*i*) Under a similar section with a similar proviso (s. 96 of the Metropolis Management Act, 1862) it has been held that where a tenant has covenanted with his landlord to bear expenses (similar to those referred to in s. 104, *supra*), he has no right to deduct from his rent the amount of such expenses after they have been paid by him, and that the landlord's right to distrain for unpaid rent is not affected (*Skinner*

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v. *Hunt*, [1904] 2 K. B. 452 ; 68 J. P. 402). It has also been held that in order to entitle an occupier to avail himself of the provision, the money must have been actually paid ; and consequently that a distress for rent accrued due after a notice under that section levied before payment to the vestry which gave the notice was not illegal (*Ryan* v. *Thompson* (1868), L. R. 3 C. P. 144 ; 32 J. P. 135).

(*k*) The authority must make this demand and give the notice. As to authentication and service of such notice, see ss. 266, 267, *post*. For forms of demand and notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 475.

(*l*) See also notes to s. 226, *post*.

It frequently happens that statutes which impose a burden primarily upon the owner of premises, contain express provisions enabling landlords and tenants to agree between themselves that the burden shall ultimately fall on the latter. Such burdens sometimes take the form of an obligation on an owner to pay money to a local authority in respect of work done for the benefit of premises, *e.g.*, paving work under the Metropolis Management Acts, 1855 and 1862, and under the Private Street Works Act, 1892. In other cases the duty is cast upon the owner of doing the work himself, but on his default the authority may carry out the work and charge him with the cost, *e.g.*, work done in the abatement of nuisances caused by structural defects under ss. 94—98 of the P. H. A., 1875, or ss. 4 and 5 of the P. H. (London) A., 1891, and paving work done under s. 150 of the P. H. A., 1875. Section 104, *supra*, expressly provides for the making of agreements as to who shall ultimately bear expenses incurred for the abatement of nuisances under this Act, and a similar provision is contained in s. 121 of the P. H. (London) A., 1891. Section 226, *post*, also preserves the rights of landlords and tenants to agree as to rates made under Part VI. of this Act.

Incidence of cost as between landlord and tenant.

Owners of premises have, not unnaturally, tried to so frame covenants in leases granted by them as to cast upon the lessees the burden of whatever expenses have to be met in respect of the demised premises. In so far as such expenses represent permanent improvements of which they will not get the full benefit, tenants have, quite naturally, sought to escape payment. The result has been that a large number of cases turning upon the construction of covenants as to rates, etc., have come before the courts. The principle of law underlying the cases is the same whether the expenses are those of the nature referred to in s. 104, *supra*, or are expenses in connection with paving, etc., and the decisions on both points are therefore collected in this note.

Prior to the decision of the Court of Appeal in *Foulger* v. *Arding*, *post*, p. 199, the authorities on the subject were in an unsatisfactory condition, and even now, although many cases decided since *Foulger* v. *Arding*, *post*, have further cleared the air, it cannot be said that the law is clear. It will, however, probably be found that the authorities warrant the following propositions : (1) *primâ facie* a covenant which merely throws " rates, taxes and assessments " upon a tenant, imposes upon him a liability to pay only assessments of a temporary or recurring nature ; (2) a covenant containing such words as " duties," " outgoings," " impositions," or " charges " *may* impose upon a tenant a liability to pay for permanent improvements of the demised premises.

A lease in which a tenant merely covenants to pay his " rent without deduction " cannot be construed as a contract between landlord and tenant which will oust the statutory right of the tenant to deduct the payments referred to in the section. See *Home and Colonial Stores* v. *Tod* (1891), 63 L. T. 829, decided under the similarly worded section (s. 96) of the Metropolis Management Act, 1862.

By a local Act commissioners were authorised to flag footways, and the cost thereof was to be paid by the tenants or occupiers of the houses next adjoining. Another clause enabled a tenant to deduct the cost so paid by him out of his rent :—*Held*, that this charge was within the terms of a covenant in a lease subsequently made, whereby the tenant covenanted to pay all taxes, rates, duties, levies, assessments and payments whatsoever, which were or during the term might be rated, levied, assessed, or imposed on the premises (*Payne* v. *Burridge* (1844), 12 M. & W. 727, followed in *Brett* v. *Rogers*, *post*, p. 197).

Expenses of drainage works done upon premises under the Metropolis Management Act, 1855, were held to be payable by a lessee under a covenant to pay, bear

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and discharge "all such parliamentary, parochial, county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties and services whatsoever, as during the term should be taxed, assessed, or imposed upon or in respect of the premises or any part thereof" (*Sweet* v. *Seager* (1857), 21 J. P. 406; 2 C. B. (N.S.) 119).

The plaintiff demised premises to the defendant for seven years, at the "clear yearly rent" of £90, the latter covenanting to "pay and discharge all taxes, rates, assessments and impositions whatsoever (except property tax) which during the term should become payable in respect of the demised premises." It was held that the tenant was not liable to pay sewering and paving expenses under a local Act which empowered the local authority to order streets to be sewered and paved by the owners of the adjoining premises, and in case of default of such owners to do the work themselves and to charge the respective owners with their proportionate parts of the expenses thereof. The plaintiff neglected to do the required work, and the authority caused it to be done, and the plaintiff paid his apportioned share. The Court of Common Pleas, distinguishing *Sweet* v. *Seager*, *supra*, held that the payment was not made by the plaintiff for a rate, assessment, or imposition which had become payable in respect of the demised premises, but was in the nature of a penalty for the breach of the duty imposed upon him by the Act of Parliament (*Tidswell* v. *Whitworth* (1867), L. R. 2 C. P. 326). This case was followed in *Rawlins* v. *Briggs*, *post*, p. 194, and distinguished in *Midgley* v. *Coppock*, *post*, p. 194.

Tidswell v. *Whitworth*, *supra*, was distinguished in the following year. A lessee covenanted that he would, during his term, pay and discharge "all taxes, rates, duties, and assessments whatsoever which during the continuance of the demise should be taxed, assessed, or imposed on the tenant or landlord of the premises demised in respect thereof." It was held that the tenant was liable to pay paving expenses charged by the vestry against the landlord under the Metropolis Management Acts on the ground that the amount charged was a "duty" imposed upon the owner in respect of the premises within the covenant (*Thompson* v. *Lapworth* (1868), L. R. 3 C. P. 149; 32 J. P. 184). This case was distinguished in *Rawlins* v. *Briggs*, *post*, p. 194, and followed in *Wix* v. *Rutson*, *post*, p. 198.

Tidswell v. *Whitworth*, *supra*, and *Thompson* v. *Lapworth*, *supra*, are the starting points of two streams of authorities, as to which COLLINS, M.R., in *Foulger* v. *Arding*, *post*, p. 199, said: "The distinction which appears to have been taken between the covenants in *Tidswell* v. *Whitworth* and *Thompson* v. *Lapworth*, and for some time to have been treated as the cardinal distinction in such cases, was that in the first of those cases there was no reference to any persons upon whom the impositions intended to be covered by the covenant were charged or imposed, whereas, in the second, the covenant spoke of them as imposed 'on the tenant or landlord of the premises demised in respect thereof.' It appears to me that, in the earlier cases which followed, stress was laid on the presence or absence of words of this kind rather than on the words used in the description of the nature of the obligations included in the covenant, and the presence or absence in that description of particular words such as 'duties' or 'outgoings.' Later on greater emphasis appears to have been laid in the cases on the presence of words like 'duties' or 'outgoings' in the description of the obligations included in the covenant than on that of words describing the person or persons on whom they were imposed. *Brett* v. *Rogers* (*post*, p. 197) may be referred to as one of the latter class of cases, the last of which is *Farlow* v. *Stevenson* (*post*, p. 198), where the court no doubt gave effect to the word 'duties' as throwing the obligation on the tenant, though there were no words in the covenant describing the person or persons on whom the duties were imposed."

A landlord's covenant to pay all rates, taxes, tithes, and all other charges payable in respect of the premises, was held not to apply to the cost of cleansing a piece of ornamental water effected under an order in execution of the Nuisances Removal Act, 1855, s. 16 (*Bird* v. *Elwes* (1868), L. R. 3 Ex. 225; 32 J. P. 694).

A lessee covenanted to pay all outgoings charged on the premises or on the landlord in respect thereof. The lessee, after receipt of a notice, constructed a drain, having arranged with the landlord that he should do so, and that whichever one of them was legally liable should ultimately bear the charge. It was decided that the lessee was liable (*Crosse* v. *Raw* (1874), L. R. 9 Ex. 209). This decision was followed

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in a case where the plaintiff demised premises at a yearly rent "clear of all present and future rates, taxes, and deductions," to the defendants who covenanted to pay the rent, and also to bear and pay all the rates, taxes, and outgoings then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, sued the defendants for the amount. It was held that the omission of the word "outgoings" in the reddendum clause did not qualify the covenant so as to take it out of the decision in *Crosse* v. *Raw, supra*, and that the plaintiff was therefore entitled to recover (*Gardner* v. *Furness Rail. Co.* (1883), 47 J. P. 232). *Crosse* v. *Raw, supra*, was also approved of by the Court of Appeal in *Budd* v. *Marshall, infra*.

A lessee for a term of twenty-one years covenanted to pay the rent reserved "without any deduction or abatement except land tax and landlord's property tax," and further "to pay and discharge all and all manner of taxes, rates, charges, assessments, and impositions whatever (except as aforesaid) then or at any time or times during the term to be charged, assessed, or imposed on the premises thereby demised, or in respect thereof, or of the said rent as aforesaid, by authority of Parliament or otherwise howsoever." The lessor, in compliance with a notice received under s. 94 of this Act, executed works necessary to abate a nuisance arising from the bad condition of the drains upon the premises. It was held by the Court of Common Pleas, upon the authority of *Tidswell* v. *Whitworth, supra*, and distinguishing *Thompson* v. *Lapworth, supra*, that the payment made by the lessor for the works was not a "rate, charge, assessment, or imposition assessed or imposed on the demised premises or in respect thereof," but was made in performance of a duty imposed upon him by the Act of Parliament, and that he was not entitled to call upon the lessee to repay the amount (*Rawlins* v. *Briggs* (1878), 3 C. P. D. 368). It should be observed that in this case, s. 257, *post*, was not cited. It is difficult to reconcile this decision with the decision in *George* v. *Coates, post*, p. 200, and it must, we think, be regarded as overruled.

A lease contained covenants to pay the rent clear of all deductions for or in respect of the sewers rate or any other rates, taxes, duties, charges, and assessments whatsoever, whether parliamentary, parochial, or otherwise howsoever, except income tax on rent; and further, that the lessee would at all times bear, pay and discharge the land tax (if any), sewers rate, borough rate, improvement rate, tithes and tithe rent-charge in lieu of tithes, and all other taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise, which then were, or which at any time or times thereafter during the said term should be taxed, charged, rated, assessed, or imposed on the said premises or any part thereof, or upon the landlord or tenant in respect thereof, or in respect of the said yearly rent, except as aforesaid. There was also a covenant by the lessee to repair. It was held by the Court of Appeal (BAGGALLAY and BRAMWELL, L.JJ., BRETT, L.J., dissenting) that the tenant was liable to repay to the landlord the expense of making good defective drainage on the requirement of the local sanitary authority under the P. H. A., 1875, the expense being a "duty" within the meaning of the covenant (*Budd and Another* v. *Marshall* (1880), 5 C. P. D. 481; 44 J. P. 584). This decision was followed by NORTH, J., in *In re Bettingham, Melhado* v. *Woodcock* (1892), 9 T. L. R. 48, and by WILLS, J., in *Clayton* v. *Smith* (1895), 11 T. L. R. 374. See also *In re Robertson and Thorne* (1883), 47 J. P. 566, and *Smith* v. *Robinson, post*, p. 196.

The plaintiffs bought of the defendant three houses, and by the contract of sale the latter agreed to discharge "all rates, taxes, and outgoings," up to the time of completion. The purchase was completed, and afterwards payment was demanded from the plaintiffs of expenses incurred under a local Act in improving the street in which the houses stood. The work had been done before the houses belonged to the defendant, and at the time of the sale to the plaintiffs neither party knew of the charge. The plaintiffs, having paid the sum demanded, sued the defendant for repayment. It was held, distinguishing *Tidswell* v. *Whitworth, ante*, p. 193, that the charge for improving the street was an "outgoing" which the defendant had bound himself to discharge, and that the plaintiffs were entitled to recover (*Midgley and Another* v. *Coppock* (1879), 4 Ex. D. 309; 43 J. P. 683). This case was followed in *Tubbs* v. *Wynne, post*, p. 197.

The defendant, on taking a house, covenanted to pay "all rates, taxes, charges,

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and assessments whatsoever, which now are, or may be, charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof." It was held that paving expenses under s. 150, *post*, p. 286, were "a charge upon the premises," or "upon a person in respect thereof," so as to entitle the lessor to recover from the defendant the amount of such expenses paid by him (*Hartley* v. *Hudson* (1879), 4 C. P. D. 367; 43 J. P. 784).

A lessee for a term of seven, fourteen, or twenty-one years of a house in a new street in the metropolis, covenanted to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof. It was held by the Court of Appeal that the tenant was not liable to repay to the landlord the amount of paving expenses apportioned in respect of the demised house under the Metropolis Management Acts, 1855 and 1862, as it was not charged on the premises, but was charged or imposed by the Acts on the owner in respect of the premises (*Allum* v. *Dickinson* (1882), 9 Q. B. D. 632; 47 J. P. 102).

A tenant of premises in the metropolis agreed to pay "all rates, taxes and assessments payable in respect of the premises during the term." The street in which the premises were was paved by the vestry. It was held by the Divisional Court that the sum assessed upon the owners as their proportion of the expenses of paving the street was not a rate, tax, or assessment within the meaning of the covenant, but a charge imposed upon the owners for the permanent improvement of their property (*Wilkinson* v. *Collyer* (1884), 13 Q. B. D. 1; 48 J. P. 791).

It should be noticed that in the metropolis, paving expenses are not a charge upon the premises, while they are such a charge in districts subject to the P. H. A., 1875. See s. 257, *post*. It is submitted that this is the true point of distinction between the last two cases and *Hartley* v. *Hudson*, *supra*.

By a lease of land in the metropolis the lessee covenanted that he would pay "the tithe or rent-charge in lieu of tithes, land tax (if any), sewers rates, main drainage rates, and all other taxes, rates, impositions, and outgoings whatsoever, then or thereafter to be charged or imposed on or in respect of the said premises, or on any part thereof (except the landlord's property tax)." The lessor having had to pay his share of the cost of paving a new street, sought to recover the amount from the lessee, but MATHEW, J., held that the case was governed by *Tidswell* v. *Whitworth*, *ante*, p. 193, and *Rawlins* v. *Briggs*, *ante*, p. 194, and gave judgment for the defendant (*Hill* v. *Edward*, W. N. (1885) 32). It is difficult to reconcile the decision in this case with the later decisions.

A lessee of a house in a new street in the metropolis covenanted to pay "all existing and future taxes, rates, assessments, land tax, tithe, or tithe rent-charge, and outgoings of every description for the time being payable either by the landlord or tenant in respect of the said premises." It was held by the Divisional Court that the owner's proportion of the cost of paving the street was an "outgoing" payable by the lessee under the covenant (*Aldridge* v. *Fearn* (1886), 17 Q. B. D. 212). The court pointed out that the words of the covenant in this case were more comprehensive than in *Wilkinson* v. *Collyer* or *Hill* v. *Edward*, *supra*.

A testator directed the rents and profits of a leasehold house "after payment of all ordinary outgoings for ground rent, repairs, taxes, expenses of insurance or otherwise," to be paid to his widow for life, and after her death to certain other persons. The trustees of the will, upon notice from the vestry under the Metropolis Management Acts, executed certain drainage works. It was held that the cost of the works was an "outgoing" within the meaning of that term as used in the will, and must therefore be paid by the tenant for life (*Re Crawley*, *Acton* v. *Crawley* (1885), 28 Ch. D. 431; 49 J. P. 598). See, however, as to this later cases in note (*c*), *ante*, p. 190.

By an agreement for a lease of a house for three years at a rent of £75 per annum, the tenant agreed "to pay all sewers rates, tithe rent-charge, land tax (if any) and all existing and future rates, taxes, assessments, and outgoings of every description payable by landlord or tenant in respect of the premises during the tenancy (except the landlord's property tax)." The local board made a claim upon the landlord and tenant for the amount of paving expenses apportioned in respect of the house. It was held that the words of the agreement were wide enough to cover this payment,

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and that their meaning could not be regarded as altered because the agreement was only for a term of three years. It was held, therefore, that the tenant must pay the amount claimed by the board (*Batchelor* v. *Bigger* (1889), 60 L. T. 416).

The plaintiffs were tenants of a house under a lease from the defendant, by which a rent of £40 was reserved "to be paid without deduction, except landlord's property tax, by equal quarterly payments, free and clear from all deductions for main drainage and sewer rates, metropolitan and local improvement rates, taxes, land tax, tithe rent-charge and commutation in lieu of tithes," and the lessees covenanted to pay "the said yearly rent of £40 at the times and in manner aforesaid, free and clear of all deductions, except as aforesaid," and to pay and discharge during the said tenancy all main drainage and sewer rates, etc. (following the words of the reservation). The vestry required the defendant, as owner of the premises, to construct a drain into the common sewer under the Metropolis Management Act, 1855, s. 73, and the defendant not complying, did the work themselves, and recovered the costs, £17 17*s.*, from the plaintiffs. The plaintiffs deducted this amount from their next half-year's rent, and upon the defendant threatening to distrain, brought an action for an injunction to restrain him. It was held that the payment in question was not within the express covenant in the lease (*Home and Colonial Stores* v. *Tod* (1891), 63 L. T. 829). It has already been pointed out that the covenant to pay the rent "without deduction" could not be construed as a contract between landlord and tenant to exclude the tenant's right to deduct this payment from his rent. See p. 192, *ante*.

A tenant covenanted to pay all rates, taxes, and assessments whatsoever which then were or during the said term should be imposed or assessed upon the demised premises or the landlord or tenant in respect thereof by authority of Parliament or otherwise, and also to make, uphold, support, cleanse, and repair, and keep in repair, all sewers, drains, cesspools, necessaries, privies, vaults, and other easements belonging to the demised premises. The local authority served on the mortgagee in possession (as the owner) a notice requiring him to abate a nuisance arising from pumping sewage from a cesspool, and on the owner's default, did the work. The owner paid the expenses under threat of legal proceedings, and brought an action to recover them from the tenant. A. L. SMITH, J., held that the tenant was not liable under either covenant (*Lyon* v. *Greenhow* (1892), 8 T. L. R. 457).

A lessee covenanted to pay, bear and discharge all land tax, sewers rate, main drainage rate, and all other rates, taxes, assessments charges, or impositions whatsoever, parliamentary, parochial, or otherwise, taxed, charged, assessed, or imposed upon the demised premises, or on the lessor for or in respect of the premises. He also covenanted to repair, but failed to do so, in consequence of which a drain on the premises got out of order, and caused a nuisance. The sanitary authority made an order on the lessor, under the P. H. (London) A., 1891, to abate the nuisance. The lessor incurred expenses in complying with this order and sued the lessee for the amount:—*Held* (approving *In re Bettingham, Melhado* v. *Woodcock*, *ante*, p. 194), that the expenses so incurred were a charge imposed on the lessor in respect of the premises, and that the lessor was entitled to recover (*Smith* v. *Robinson*, [1893] 2 Q. B. 53; 58 J. P. 73).

Freehold messuages were devised to trustees, their heirs and assigns, upon trust, to permit A. and B. during their joint lives, and the survivor of them during his life, to hold the same, and receive the rents, and after the death of the survivor, upon trust for the first and other sons of B. successively in strict settlement. During the life of one of the equitable tenants for life, the trustees applied certain capital moneys held by them upon similar trusts in payment of expenses incurred for drainage works in respect of the devised messuages, which were without sufficient drains as specified in the P. H. A., 1848, s. 49:—*Held*, that the trustees were "owners" within the meaning of that Act, and had rightly paid the drainage expenses in question out of the capital moneys; but that as between the tenant for life and the remainderman the capital moneys so applied must be treated as a charge upon the property. By a clause in his will the testator declared that the parties beneficially entitled to the rents and profits of any of his houses should keep the same in good and absolute repair:—*Held*, that these drainage works were not repairs within the meaning of

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that clause (*Re Barney, Harrison* v. *Barney*, [1894] 3 Ch. 562). See also note (*c*) on p. 190, *ante*.

By conditions of sale of land within the metropolis the date fixed for completion was May 8th, all outgoings up to that date being cleared up by the vendor. Before May 8th a magistrate made an order to take down dangerous structures on the land. This order was not complied with, and after May 8th, the county council took down the structures and demanded and received from the purchaser the expenses of so doing. It was held, following *Midgley* v. *Coppock*, *ante*, p. 194, that the liability having been incurred before May 8th, the expenses were "out-goings" which the purchaser was entitled to recover from the vendor (*Tubbs* v. *Wynne*, [1897] 1 Q. B. 74). This decision was followed in *Barsht* v. *Tagg*, *post*, p. 198. See also *In re Highett and Bird's Contract*, [1903] 1 Ch. 287, and the observations on this case by ROMER, L.J., in *In re Allen and Driscoll's Contract*, [1904] 2 Ch. 226; 68 J. P. 469

A lessee covenanted to pay "the land tax, sewers rate, and all other taxes, rates, duties, assessments, and impositions, parliamentary, parochial, or otherwise, which now are or shall at any time during this demise be assessed or imposed on or in respect of the said demised premises or of the rent hereby reserved (landlord's property tax only excepted)." It was held by the Divisional Court, following *Payne* v. *Burridge*, *ante*, p. 192, that the tenant was liable to pay drainage expenses incurred by the lessor in complying with the requirement of the vestry under the P. H. (London) A., 1891. The obligation imposed upon the lessor to take up a defective drain and lay a new one, was a "duty" imposed on the lessor in respect of the demised premises (*Brett* v. *Rogers*, [1897] 1 Q. B. 525). This decision was approved and followed in *Farlow* v. *Stevenson*, *post*, p. 198.

A tenant of premises outside the metropolis covenanted to pay "all rates, taxes, and assessments whatsoever, which now are, or during the term shall be, imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax." CHANNELL, J., held that the lessee was not liable to pay paving expenses recovered in a summary manner from the owner under s. 150, *post*, p. 286 (*Baylis and Another* v. *Jiggens and Another*, [1898] 2 Q. B. 315).

The decision in the last-mentioned case was followed by the Divisional Court in *Lumby* v. *Faupel* (1903), 88 L. T. 562; 67 J. P. 202, where it was held that a landlord who had paid paving expenses under s. 150, *post*, p. 286, could not recover from a tenant whose covenant was "to pay all rates, taxes, and assessments whatsoever which now are or during the said term shall be imposed or assessed upon the said premises." On appeal this decision was affirmed, but on another ground, viz., that upon which *Surtees* v. *Woodhouse* was decided. See that case, *post*, p. 200, and also *Lumby* v. *Faupel* (in the Court of Appeal) cited therewith.

In a lease of a factory for twenty-one years the tenants covenanted to pay all rates and taxes, sewers rate, main drainage rate, parish dues, and all other rates, taxes, impositions and outgoings whatsoever which were then or should at any time thereafter be assessed, charged, or in anywise imposed upon or in respect of the demised premises by authority of Parliament or otherwise. Also to pay a fair share and proportion of all costs and expenses which the lessors, in respect of being owners and lessors of the premises demised, might be called upon to pay, bear or contribute, or would be liable to in or about every or any reparation, pulling down, rebuilding or raising of every or any party wall, party fence wall, timber partition, or party arch, or incidental thereto, or in or about any drainage or sewerage, or otherwise by virtue of any Act or Acts of Parliament. During the term the lessors, as owners of the demised premises were compelled to spend £710 in constructing a fire-escape according to the requirements of s. 7 of the Factory and Workshop Act, 1891. In an action to recover this expense from the tenant, it was held that this was not an imposition or outgoing under the first covenant, and that even if it was, the second covenant was to be read as a proviso on the first and took it out of the first. The tenant was therefore only liable to pay a fair share of the expense (*Arding* v. *Economic Printing and Publishing Co.* (1898), 79 L. T. 622; 15 T. L. R. 111).

The expense of paving a new street incurred by a landlord under s. 77 of the Metropolis Management Amendment Act, 1862, was held to be recoverable by him from a tenant who had covenanted to pay and discharge all taxes, charges,

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rates, duties, tithes and tithe rent-charge, assessments and impositions whatsoever which are now or may at any time hereafter be taxed, charged, rated, assessed, or imposed upon the premises or any part thereof, or upon the landlord or tenant in respect thereof, landlord's property tax only excepted (*Wix* v. *Rutson*, [1899] 1 Q. B. 474). This decision followed *Thompson* v. *Lapworth*, *ante*, p. 193.

A covenant by a lessee to pay all sewers rates, and all other rates, taxes, outgoings and assessments whatsoever imposed or assessed upon or payable in respect of the premises, was held to include the cost of works amounting to a reconstruction of the house drainage necessary in order to comply with a notice to abate a nuisance on the premises given under the P. H. (London) A., 1891 (*Antil* v. *Godwin* (1899), 15 T. L. R. 426; 63 J. P. 441).

A lessee who had covenanted to pay "all taxes, rates, duties, and assessments whatsoever, which now are or hereafter may become payable for or in respect of the demised premises," was held liable as between himself and his landlord, to pay for the reconstruction of a drain required by the vestry under the Metropolis Management Act, 1855, s. 85 (*Farlow* v. *Stevenson*, [1900] 1 Ch. 128, approving and following *Brett* v. *Rogers*, *ante*, p. 197).

Conditions of sale for the purchase of leaseholds provided that the purchase should be completed on August 11th, and that a purchaser paying his purchase-money should as from that day be let into possession or receipt of rents and profits, and up to that date all rents, rates, taxes and outgoings were, if necessary, to be apportioned, and such apportioned rents were to be paid on completion by each purchaser to the vendor. If the completion of the purchase was delayed beyond the before-mentioned day, the remainder of the purchase-money was to bear interest from that day to the day of actual payment thereof, or at the option of the vendor he might receive the rents and profits up to the day of the actual completion of the purchase. Owing to the purchaser's default the purchase was not completed on the date fixed, and the vendor remained in possession of the rents and profits. In November, notices were served upon the vendor under the P. H. (London) A., 1891, to abate nuisances on the premises, and the vendor in complying with the notices expended a sum of £24. In an action for specific performance by the purchaser, the vendor claimed to be entitled to payment by the purchaser of the £24, as well as of the balance of the purchase-money. It was held, following *Tubbs* v. *Wynne*, *ante*, p. 197, that £24 being an outgoing, which from the time when a good title was shown must clearly be borne by the purchaser in the absence of express stipulation, the plaintiff would, as from August 11th, have been entitled to the rents and profits, and liable to pay the £24 if the conditions had not given the vendor the option to keep the rents and profits in lieu of interest; but that there was nothing to relieve the plaintiff from the obligation to pay the outgoings, and that he could only obtain specific performance on paying the £24 and the balance of his purchase-money (*Barsht* v. *Tagg*, [1900] 1 Ch. 231).

Conditions of sale of leasehold premises in an urban district provided that the purchaser should be entitled to possession or to the rents and profits as from September 29th, down to which time all outgoings were to be paid by the vendor. On July 26th, the district council served a notice under s. 150, *post*, p. 286, requiring the owner to sewer, level, and make up the street within one calendar month. The purchaser called on the vendor to comply with this notice, contending that the expense was an outgoing within the meaning of the condition of sale. This the vendor denied, and refused to do the work, and the work was done by the council, but after September 29th, and they apportioned the sum to be paid in respect of the premises at £153 15*s.* 10*d.* BYRNE, J., held that the vendor was not liable to pay it as an outgoing under the conditions of sale (*Re Waterhouse's Contract* (1900), 44 Sol. J. 645).

The lessee of a factory covenanted to pay and discharge "all rates, taxes, charges, and assessments and outgoings whatsoever, whether parliamentary, parochial, local, or of any other description, which now are or may at any time hereafter be assessed, charged, or imposed upon the demised premises, or the landlord or occupier in respect thereof (the landlord's property tax only excepted) . . . and from time to time and at all times during the said term well and substantially to repair, cleanse, maintain, amend and keep the demised premises and all additions or additional buildings . . . with all necessary reparations, cleansings, and amendments whatsoever, original

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structural defects in the building of the premises excepted . . ." It was held by the King's Bench Division that the lessee was not liable to bear the expenses to which the lessor had been put in complying with requirements (*i.e.*, the provision of means of escape from fire) under s. 7 of the Factory and Workshop Act, 1891 (*Monk* v. *Arnold*, [1902] 1 K. B. 761). So far as this decision turned on the wording of the covenant, it was based upon that of the same court in *Foulger* v. *Arding*, [1901] 2 K. B. 151, which was reversed on appeal. See *infra*. It is now, however, clear that in such cases under s. 7, the High Court has no jurisdiction at all. See *Stuckey* v. *Hooke*, *Horner* v. *Franklin*, and *Monro* v. *Lord Burghclere*, *post*, pp. 201, 202.

A lessee covenanted to pay "all rates, taxes, assessments, and outgoings then payable, or thereafter becoming payable, whether by the landlord or tenant in respect of the said demised premises, or any part thereof, or in respect of the rent or any part thereof." It was held by the King's Bench Division that the lessee was liable for apportioned paving expenses under s. 150, *post*, p. 286, which the landlord had paid (*Weld and Others* v. *Clayton-le-Moors U. D. C.* (1902), 86 L. T. 584).

Foulger v. *Arding*.

Many of the above cases came up for consideration by the Court of Appeal in *Foulger* v. *Arding*, [1902] 1 K. B. 700, where the facts were as follows: The defendant was tenant to the plaintiff of a dwelling-house under a lease for sixteen years from 1892. The lease contained a covenant that the tenant would "pay and discharge all taxes rates including sewers main drainage assessments and impositions whatsoever which now are or which at any time or times hereafter during the continuance of the said term hereby granted be taxed rated assessed charged or imposed upon or in respect of the said premises or any part thereof on the landlord tenant or occupier of the same premises by authority of Parliament or otherwise howsoever (landlord's property tax and tithe only excepted)." It contained no covenant to repair by either landlord or tenant. The sanitary authority required the lessor to abate a nuisance caused by a foul and offensive privy on the premises, and to remove the privy and construct a water-closet. The lessor did the work, and it was held that he was entitled to recover the expense incurred by him in so doing, such expense being covered by the words "impositions charged or imposed upon or in respect of the said premises on the landlord tenant or occupier of the same." COLLINS, M.R., in giving judgment, said: "The decisions on this subject remove one or two difficulties which might arise, if the construction of such a covenant as this were being considered for the first time. It is clear on the authorities that, where there is a defect inherent in the structure of the premises at the time of the demise, and which is the subject-matter of an obligation imposed by statute on the landlord, the burden of that obligation may, nevertheless, by a covenant of this kind, be thrown upon the tenant. It is also clear from the authorities that a covenant of this kind may, if it contains appropriate words, be construed as being directed, not only to recurring charges such as rates and taxes, but also to charges in the nature of capital expenditure incurred once for all, such as charges in respect of structural work. If the matter were unencumbered by authority, and could be looked at with clear eyes, regardless of the labyrinth of cases on the subject, I think that no one could doubt that an obligation, such as that in the present case, imposed upon a landlord in respect of a structural defect, which he was bound by statute to remedy, or to pay the cost of remedying, might properly be described as an imposition charged or imposed upon the landlord in respect of the premises. It seems to me that, if the matter were clear of authority, the obligation imposed on the plaintiff in this case would come within the plain meaning of the words of the covenant. The only possible answer appears to me to be that which was indicated by an observation of my brother ROMER during the argument. It may be asked, if so wide a sense is to be given to the word 'imposition,' where is the line to be drawn? If it is to be construed as capable of covering this case, must it not be equally capable of covering such a case as one in which demised premises were built beyond the building line of a street, and there was a consequent obligation on the landlord to pull down part of the premises and rebuild in conformity with the building line? It is said that it could not possibly be contended that such an obligation was within the meaning of the term 'imposition' as used in a covenant of this kind. This argument may, as it seems to me, be met by pointing out that underlying the whole matter is the consideration that we are dealing with a contract

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of demise between landlord and tenant, and the covenant must be assumed to relate only to matters which may reasonably be supposed to have been contemplated by the parties as being within the purview of such a contract; and such an extreme case as that of an obligation to pull down and rebuild the premises is so far outside of anything that can possibly be conceived of as being within the contemplation of the parties that it is necessarily excluded from the meaning of words which might otherwise have been wide enough to include it." His lordship later on said: "I think that, apart from authority, it would be impossible to say that the word 'impositions' is not large enough to cover the obligation in the present case"; and he proceeded to show that there was nothing in the authorities to debar the court from giving its natural meaning to that word, and then said: "it seems to me also that an obligation of this kind is one of the very things that the parties would probably contemplate in entering into this covenant, as being a matter which might ordinarily arise as an incident of the relation between landlord and tenant. It is not an imposition of a class which is so far outside that relation that it could not have been contemplated by the parties."

According to the last mentioned decision, the course to be pursued, when construing covenants in leases, would appear to be to first determine whether the words of the covenant are primâ facie wide enough to cover the obligation in question, and, if they are, to ascertain whether the obligation is one of a class which would reasonably be within the contemplation of the parties. The ground of the decision in *Foulger* v. *Arding, supra,* has since been frequently applied.

A lessee covenanted to pay and discharge all land tax, sewer rate, main drainage rate, tithes, tithe rent-charge, and all parliamentary, parochial and other rates, assessments and impositions whatsoever which should or might be laid, imposed on, or payable in respect of [a factory] or any part thereof during the term. This was held (following *Foulger* v. *Arding, supra*) to impose upon the lessee the liability to repay to the lessor the expenses incurred in complying with a requirement under s. 7 (2) of the Factory Act, 1891 (*Shephard* v. *Barber* (1903), 1 L. G. R. 157; 67 J. P. 238).

A lessee of a house for seven years covenanted "to pay during the term the sewers rate and all other taxes, rates, charges, and assessments whatsoever, parliamentary, parochial, or otherwise, which then were or thereafter should be imposed, charged, or assessed, upon or in respect of the premises, or payable by either the owner or occupier in respect of the same, the landlord's property tax only excepted." In compliance with a notice from the local authority the lessee repaired a defective drain which was causing a nuisance, and sought to recover from the lessor the cost of so doing. It was held by the Court of Appeal that the case was not distinguishable from *Foulger* v. *Arding, supra,* and that the lessee could not recover (*George* v. *Coates* (1903), 88 L. T. 48).

A lessee covenanted to pay and bear "all present and future rates, taxes, duties, assessments and outgoings charged upon the said premises or the owner or occupier in respect thereof." He sublet the premises, the sub-lessee covenanting "to observe and perform all the lessee's covenants and conditions contained in the original lease, and to indemnify [the lessee] from and against all claims and demands in respect thereof." Before the date of the sub-lease the local authority completed certain private street works under the Private Street Works Act, 1892, but the final apportionment on the adjoining premises, including the premises in question, was not made until after the sub-lease. The lessee having paid to his lessor the amount apportioned in respect of the premises, as being an "outgoing" within the terms of the covenant in the head lease, sought to recover the amount from the sub-lessee:—*Held*, that the apportioned amount, though not then ascertained, became a charge on the premises and owner as from the date of the completion of the works; and that, as the date of the sub-lease was subsequent to the completion, the sub-lessee was not liable to indemnify his lessor (*Surtees* v. *Woodhouse*, [1903] 1 K. B. 396; 67 J. P. 232). This decision was followed by the Court of Appeal in *Lumby* v. *Faupel* (1904), 90 L. T. 140; 68 J. P. 265.

The subject-matter of a tenancy was a cottage and yard adjoining a wharf, and the rent was £20. The lease contained a covenant to pay "all rates, taxes, assessments and outgoings of every description, payable in respect of the premises during

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the tenancy," and the tenants covenanted to keep the demised premises in tenantable repair during the tenancy. The tenants had held the premises for over ten years. FARWELL, J., held that a supply of water to a water-closet required by the sanitary authority under the P. H. (London) A., 1891, was, and that the paving and draining of a yard and repairs to drains required by such authority under the said Act were not, within the reasonable contemplation of the parties to the demise (*Valpy* v. *St. Leonard's Wharf Co., Ltd.* (1903), 1 L. G. R. 305; 67 J. P. 402).

An agreement for a three years' tenancy at a rent of £55 per annum, contained covenants by the tenant to pay "all taxes, rates, assessments, and outgoings of every description for the time being payable in respect of the premises as they become due." During the tenancy the landlord was compelled by the local authority to spend £83 10*s.* in relaying defective drains on the premises. WRIGHT, J., held, distinguishing *Valpy* v. *St. Leonard's Wharf Co., supra*, that he could recover the amount from the tenant under his covenant; the fact that the tenancy was one for three years only was no sufficient reason for limiting the words "outgoings payable in respect of the premises," and not construing them in their ordinary sense (*Stockdale* v. *Ascherberg*, [1903] 1 K. B. 873; 67 J. P. 435; affirmed, [1904] 1 K. B. 447; 68 J. P. 241). See, however, *Henman* v. *Berliner*, *post*, p. 202.

By an agreement for a lease of a house in London for a term of three years at the "clear yearly rent" of £54, to be paid free and clear of all deductions whatsoever (property tax only excepted), the tenant agreed to pay and discharge "all rates, taxes, assessments, and impositions whatsoever, whether parliamentary, parochial, or otherwise, that may become due or assessed in respect of the messuage, premises, and garden during the tenancy (property tax excepted as aforesaid), and to keep the premises in as good repair as at the commencement of the tenancy, fair wear and tear excepted." During the term notices were served upon the landlord and the tenant, by the sanitary authority, stating that the premises were in such a state as to be a nuisance, and requiring specified sanitary work to be executed. The tenant executed the work at a cost of £118, and claimed to recover this sum from the landlord. It was held, applying *Foulger* v. *Arding*, *ante*, p. 199, and *Stockdale* v. *Ascherberg*, *supra*, that the expense was an imposition within the meaning of the agreement, which fell on the tenant, notwithstanding the absence of such words as "imposed on the landlord or tenant," and notwithstanding the shortness of the tenancy (*In re Warriner*, *Brayshaw* v. *Ninnis*, [1903] 2 Ch. 367; 67 J. P. 351).

A tenant occupied a house for three years at a yearly rent of £70 under an agreement by him to pay all "rates, taxes, assessments, and outgoings whatsoever, in respect of the said premises." He held over on the expiration of the term without any fresh agreement, and paid rent at the same rate. WRIGHT, J., held, applying *Valpy* v. *St. Leonard's Wharf Co., Ltd., supra*, that whilst so holding over he could not be liable for an expense of £70 incurred by his landlord in executing structural sanitary repairs; having regard to the relative amounts of the rent and expenditure, he could not be presumed to have become a yearly tenant subject to so onerous an obligation (*Harris* v. *Hickman*, [1904] 1 K. B. 13; 68 J. P. 65).

A lease of premises used as a bakehouse contained a covenant by the lessee to pay "all existing and future . . . impositions and outgoings of every description for the time being payable either by landlord or tenant in respect of the premises." It was held that the covenant imposed upon the lessee liability for the expense of making structural alterations necessary in order to obtain the certificate of the district council for the use of the premises as an underground bakehouse (*Goldstein* v. *Hollingsworth*, [1904] 2 K. B. 578; 68 J. P. 383). The same result followed where the covenant was "to pay all existing and future taxes, rates, assessments, and outgoings, whether parliamentary, parochial, or otherwise, for the time being payable either by the landlord or tenant in respect of the said premises" (*Morris* v. *Beal*, [1904] 2 K. B. 585; 68 J. P. 542). In *Stuckey* v. *Hooke* (1905), 3 L. G. R. 633; 69 J. P. 119, WARRINGTON, J., gave similar effect to a covenant to "bear, pay, and discharge all burdens, duties, assessments, outgoings, and impositions whatsoever, at any time during the said term charged, assessed, or imposed on the said premises, or upon the landlord or tenant in respect thereof." The decision was reversed on appeal on the ground that in such cases the High Court has no

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jurisdiction by reason of the wording of the statute in question; but see a dictum of FLETCHER MOULTON, L.J. ([1906] 2 K. B. 20; 70 J. P. 393). See also *Horner* v. *Franklin*, [1905] 1 K. B. 479; 69 J. P. 117, where, however, the Court of Appeal expressed no opinion as to whether the expenses there in question were an "outgoing" within the lessees' covenant. See also *Monro* v. *Lord Burghclere*, [1918] 1 K. B. 291; 82 J. P. 86, where the judgments in *Horner* v. *Franklin* and *Stuckey* v. *Hooke* were followed in a case decided under the London Building Acts (Amendment) Act, 1905, s. 20.

By a lease dated 1894, plaintiff demised premises to defendants for twenty-one years, at an annual rent of £105 16*s*., clear of all deductions (except property tax), and the defendants covenanted to pay the rent reserved, and "all rates, taxes, and outgoings now payable, or hereafter becoming payable, in respect of the said premises." The lease also contained a repairing covenant. It was held by the King's Bench Division that the defendants were liable for the cost of paving works under s. 150, *post*, p. 286 (*Greaves* v. *Whitmarsh, Watson & Co., Ltd.*, [1906] 2 K. B. 340; 70 J. P. 415). It was said by the court in the last-mentioned case that no distinction could be drawn between the cost of making up a street and the cost of sanitary work.

A tenant covenanted to pay "all rates, taxes, assessments, charges, and outgoings imposed or charged on the premises or the landlord or tenant in respect thereof," and the landlord covenanted to "keep the exterior of the said dwelling-house and buildings in repair." During the tenancy the local authority required certain work to be done in connection with the outside drainage of the house, and eventually an order was made by justices calling upon the landlord to do the work. The work involved, in order to comply with the authority's requirements, a certain amount of reconstruction and improvement of the existing system, as well as repair. The landlord paid for the work, and in respect of that portion of it which related to reconstruction and improvement he claimed to be recouped by the defendant on the ground that the expense was an "outgoing." It was held that the landlord's obligation under his covenant included the obligation to keep the outside drain in repair, and that the expense of executing the whole of the work fell upon him, as he could not legally perform his covenant without effecting a certain amount of reconstruction and repair (*Howe* v. *Botwood*, [1913] 2 K. B. 387).

In *Henman* v. *Berliner*, [1918] 2 K. B. 236; 82 J. P. 300, it was held that where the landlord had undertaken to put drains into proper condition and had failed to do so she could not recover the cost of reconstructing the drains (in compliance with a notice from the Local Authority) under covenant by the tenant to pay outgoings and keep in repair.

Covenants to "repair and maintain."

If a house is of such a kind that by its own inherent nature it will in course of time fall into a particular condition, the effects of that result are not within the tenant's covenant to repair. A lease contained a covenant to "substantially and effectually repair, uphold and maintain," and to deliver up the premises in a condition in accordance with such covenant. The London County Council gave the lessee a "dangerous structure notice" in reference to a bay window, and the lessee took such window down, and put in a new window flush with the main wall, thereupon the landlord brought an action to compel him to replace the bay window. The judge found that, owing to the inherent nature of the premises, the bay window could not have been made to comply with the council's requirements, without building a practically new window, and supporting it on columns of some kind, and he gave judgment for the defendant:—*Held*, on appeal, that the defendant was not liable (*Wright* v. *Lawson* (1904), 19 T. L. R. 510; 68 J. P. 34).

A road was in 1888 widened and made up by two frontagers under an agreement, whereby M. was not "to be under any liability to contribute to the maintenance or repair of the said roadway and sewers and main-drain, or any works connected therewith; but the same were to be wholly and solely maintained by T., unless and until the same should be taken to by the parish or some other local or public authority." In 1901 the local authority made up the road, or street, and apportioned on M. as a frontager the sum of £108:—*Held*, that the agreement did not apply to the works executed by the authority, and that M. could not recover the £108 from T. (*Moore* v. *Todd* (1903), 19 T. L. R. 642; 68 J. P. 43).

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A covenant to contribute a proportionate part of the expenses of repairing and maintaining a road until undertaken by the local authority, does not extend to contributing a proportion of the expense of an entire reconstruction of the road. In construing such a covenant, regard must be had to the standard of condition of the road at the time when the covenant was entered into, and the obligation is to contribute a proportionate part of the expense of putting it into a state of repair corresponding to the standard contemplated or existing at that time. Where the road is reconstructed for the purpose of its being taken over by the authority, the covenantor is liable to contribute a proportionate part of such expenses as would have been incurred in putting it into the state of repair above mentioned, but is not liable to contribute to the expenses of such work as amounts to reconstruction (*Scott* v. *Brown* (1904), 4 L. G. R. 103; 69 J. P. 89).

See also *Chelsham, etc. Association, Ltd.* v. *Hayward* (1912), 76 J. P. 52, a county court decision as to the assignability and enforcement of mutual covenants to repair a road entered into by a vendor and different purchasers from him.

Recovery of money paid under compulsion—

We may here conveniently consider the numerous decisions in cases where actions have been brought by owners against tenants, or vice versâ, or by owners or occupiers against local authorities in order to recover the expense of executing works which the defendants ought to have done themselves, and might have been compelled to do. These decisions, it will be found, turn upon the point whether the work executed was in fact done under compulsion or voluntarily, for the principle of law applicable to such actions is that a person who executes under compulsion work which another is legally compellable to do has a right of action for the expenses incurred by him against such other person.

Decisions under the P. H. (London) A., 1891.

Most of the cases have been decided under the P. H. (London) A., 1891, and before referring to them we will set out shortly the effect of the sections of that Act relevant to the matter we are discussing. Section 3 provides that an authority must give such directions to their officers as will secure the existence of any nuisance being immediately brought to the notice of any person who may be required to abate it, and the officers shall do so by serving a written "intimation"; s. 4 (1) provides for the service by the authority of an "abatement notice" upon the person responsible for the nuisance, or the owner or occupier, requiring abatement thereof; s. 4 (3) requires such last-mentioned notice to be served on the owner when the nuisance is due to a structural defect; s. 4 (4) imposes a penalty for non-compliance with a notice served under s. 4; s. 5 provides for the making of an abatement order by justices upon complaint if the abatement notice is not complied with; and, lastly, s. 11 (1) enacts that all expenses incurred in serving the notice, making the complaint, or obtaining or carrying into effect the justices' order, shall be deemed to be money paid at the request of the person on whom the order is made, or (if no order is made) then of the person by whose act or default the nuisance was caused. The first case decided under the London Act was *Gebhardt* v. *Saunders*, [1892] 2 Q. B. 452; 56 J. P. 741. The plaintiff was tenant to the defendants of a house, in which a nuisance arose from an accumulation of sewage in the cellar. The authority served at the premises a notice under s. 4 (1) addressed to "the owner or occupier," and the plaintiff did the necessary work; in the course of the work it appeared that the nuisance arose from a structural defect, but no notice had been served on the defendants, as ought to have been done under s. 4 (3), if this fact had been known beforehand. It was held by the Divisional Court that as the plaintiff would have been liable to a penalty under s. 4 (4), had he not obeyed the notice, he must be regarded as having done the work under compulsion, and that he could recover against the defendants under the words of s. 11 (1), "expenses incurred . . . in carrying the order into effect," on the ground that the word "order" was wide enough to include a notice involving a penalty for disobedience. CHARLES, J., also held that the defendants were liable, apart from s. 11, upon the common law principle already referred to, the fact that the nuisance arose from a structural defect rendering the defendants legally compellable to abate it, although such fact was not apparent in time to serve a notice under s. 4 (3). See also a similar decision under the Metropolis Management Acts (*Castleberg* v. *Kenyon*, Times, June 16th, 1879). In the next case under the P. H. (London) A., 1891, the sanitary authority had served on certain premises an "intimation" notice, addressed to the

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owners, that if certain necessary works were not completed within a specified time they would commence proceedings against them by the service of an "abatement" notice. Thereupon the occupier, without forwarding the document to the owners, or informing them of it, caused the work to be executed, and then sought to recover the amount expended thereon from the owners:—*Held*, by the Court of Appeal, that the occupiers, not being compellable to execute the work, had acted as mere volunteers in doing so, and had no claim to be reimbursed by the owners (*Thompson and Norris Manufacturing Co.* v. *Hawes* (1895), 73 L. T. 369; 59 J. P. 580).

In the next case which arose under the London Act, an "abatement" notice had been served, in consequence of which, and without waiting for an order to be made on it, the person primâ facie liable to abate the nuisance executed the work required, and it was afterwards discovered that he was not legally liable to do so, but that the sanitary authority were. It was held, following *Gebhardt's Case* on both points, that he was entitled to be recouped the expenses he had been put to through their default at common law and also by virtue of s. 11 (1) of the Act (*Andrew* v. *St. Olave's Board of Works*, [1898] 1 Q. B. 775; 62 J. P. 328). Since the last-mentioned decision under the London Act, the compulsory nature of a notice under s. 4 has not been again disputed; but there have been decisions as to the effect of an "intimation" notice under s. 3. In *Proctor* v. *Islington Borough Council* (1903), 67 J. P. 164, and *Silles* v. *Fulham Borough Council*, [1903] 1 K. B. 829; 67 J. P. 273, the authorities had served notices headed "Intimation," and signed by a sanitary inspector, requiring certain work to be done to a "drain," and threatening that, in default, the authority "may commence proceedings against you by the service of a statutory notice." The work was done, but, finding that the so-called "drain" was in fact a "sewer," the recipients of the notices claimed to recover the expenses incurred by them from the authority. In each case WRIGHT, J., held that the notice being one under s. 3 did not amount to compulsion. In *Silles' Case* there was no appeal upon this point, and in *Proctor's Case*, though the plaintiff appealed, no decision was given. The court obtained the consent of both parties to their dealing with the matter informally, and they made an award in favour of the plaintiff.

In a later case a sanitary inspector served upon the owners of a house an "intimation" under s. 3, that the house was in such a state as to be a nuisance owing to the drain being defective. The owners called upon the tenant to do the work, it being alleged that he was liable under a covenant to pay expenses of this nature. The tenant refused to do the work, and the owners therefore did it without waiting to be served with a notice under s. 4. It was held that an action could not be maintained against the tenant to recover the expense on the ground that the work was done voluntarily and not under compulsion (*Harris* v. *Hickman*, [1904] 1 K. B. 13; 68 J. P. 65). In a still later case a Divisional Court held with regret that they must regard a notice under s. 3 as not amounting to sufficient compulsion to entitle the plaintiff to recover from the authority the money expended by him in repairing what proved to be a sewer. The learned judges would have decided otherwise, but for *Thompson and Norris Manufacturing Co.* v. *Hawes, supra* (*Oliver* v. *Camberwell Borough Council* (1904), 90 L. T. 285; 68 J. P. 165). The last-mentioned case was observed upon in *Wilson's Music, etc. Co.* v. *Finsbury Borough Council*, [1908] 1 K. B. 563; 72 J. P. 37, where CHANNELL, J., decided that where an "intimation" notice is complied with under protest the money expended can be recovered.

Decisions under the P. H. A., 1875.

We will now refer to decisions under the P. H. A., 1875. In the earliest case it was held that when a person is called upon by a sanitary authority to abate, and does abate, a nuisance by doing work which the authority themselves are liable to do, and where that person afterwards seeks to recover from them the cost of the work, upon the principle that, where one person is compelled to do work which another is legally compellable to do, the cost of the work may be recovered by the one as money paid at the other's request, regard must be had to the fact that in the case of a nuisance prompt action by someone is imperative; and that because of that fact it is not necessary to show that there was actual, direct, or irresistible compulsion in order to bring the case within the principle above enunciated. It is sufficient to show that the authority took steps which practically amounted to compulsion (*North* v. *Walthamstow U. D. C.* (1898), 67 L. J. Q. B. 972; 62 J. P. 836). In this case there was no statutory notice under s. 94 of the Act, but there

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was a peremptorily worded notice, signed by the inspector of nuisances, requiring drains to be repaired within seven days.

The owner of a house, who was enlarging his premises, was required by the authority's surveyor (amongst other things) to take up and relay the back "drain" of the house (which was in fact "a sewer") and to construct an interception chamber or manhole; and these works the owner, upon being told that they must be done, though no actual steps were taken to enforce their execution, agreed to do under protest, and did do under the direction and by order of the surveyor, but without any legal proceedings being taken against him, and without serious threat of such proceedings. The liability in law for carrying out these works rested on the authority. In an action by the owner to recover the costs of the works from the authority, on the ground that he was compelled by them to do works which they were compellable by law to do:—*Held*, that the owner in the execution of these works was acting as a volunteer and not under compulsion, and was therefore not entitled to recover, although without legal proceedings or the threat of such, there may be sufficient compulsion to prevent a person being regarded as a volunteer (*Ellis* v. *Bromley R. D. C.* (1899), 81 L. T. 224; 63 J. P. 711).

A nuisance arose from an obstruction in a pipe near a house, and the authority served on the owner of the house a notice under s. 94 requiring her to abate the nuisance and to relay the drain. She, although protesting that the pipe was a sewer, did the work, and afterwards sued the authority:—*Held*, by CHANNELL, J., following his own decision in *North* v. *Walthamstow U. D. C.*, *supra*, that the expense of the work done to the sewer was money paid under compulsion, and that the owner was entitled to recover it from the authority (*Haedicke* v. *Friern Barnet U. D. C.*, [1904] 2 K. B. 807; 68 J. P. 473, reversed on appeal on another ground, [1905] 1 K. B. 110; 69 J. P. 45. See also *Wilson's Music, etc. Co.* v. *Finsbury Borough Council*, *ante*, p. 204). In the last-mentioned cases, CHANNELL, J., expressed the view that less evidence of compulsion is required when a local authority is being sued than is required when a landlord sues his tenant, or vice versâ. See a careful review of the above cases in *Hackett* v. *Smith*, [1917] 2 I. R. 508.

In *Wareham and Dale, Ltd.* v. *Fyffe* (1910), 8 L. G. R. 620; 74 J. P. 249, tenants who had been called upon by a nuisance notice from the sanitary authority to make some structural alterations in the drainage system, and had done the work, after in vain requesting the "owners" to do so, recovered the cost from the owners.

Notices were served by a local authority under the P. H. A., 1875, and under certain local Acts on the appellant and on the respondent, who were the owners of two adjoining houses, requiring them to abate a nuisance arising from the drains on their premises and to perform certain necessary works. The drainage of the respondent's house passed through the appellant's drain into a sewer. The appellant complied with the terms of his notice, but the respondent took no steps:—*Held*, that neither under s. 104 of the P. H. A., 1875, nor at common law had the appellant any right of contribution as against the respondent (*Reeve* v. *Sadler* (1903), 88 L. T. 95; 67 J. P. 63. *Cf.*, also *Nathan* v. *Rouse*, on p. 179, *ante*).

Power to individual to complain to justice of nuisance.

105. Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any local authority by any person aggrieved thereby (*a*), or by any inhabitant of such district, or by any owner of premises (*b*) within such district, and thereupon the like proceedings (*c*) shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority (*d*):

Provided that the court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise (*e*) the entry into such premises of any constable or other person for the purposes of such examination;

Provided also, that the court may authorise any constable or other

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person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner (*f*).

Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon (*g*).

(*a*) These words extend the provision of 23 & 24 Vict. c. 77, s. 13, since the nuisance complained of, which was there limited to *private* premises, is now described generally, and may exist on any premises. But while the section enables any person aggrieved by a nuisance to take proceedings for its abatement, yet the effect of the section is not to impose a statutory duty on the owner of premises to keep them in a sanitary condition, or so as not to be a nuisance, so as to enable the tenant to counterclaim damages for breach of such duty in an action for rent (*Hildige* v. *O'Farrell* (1880), 6 L. R. Ir. 493).

In *Hilton* v. *Hopwood* (1899), 44 Sol. J. 90, the respondent deposed that she resided at H. Cottage, and that she was aggrieved by smoke coming from the R. factory chimneys, which damaged the shrubs and vegetation of her property, but she was unable to say that she was aggrieved on either of the dates mentioned in the summonses, or that the smoke from the chimneys, in fact, reached her on those dates. The distance from H. Cottage to R. was nearly six miles. The justices made an order on the appellants prohibiting the recurrence of the nuisance. On appeal, RIDLEY, J., was of opinion that the complainant in proceeding under s. 105 must show that she was aggrieved by the nuisance which took place on the date mentioned in the summons. DARLING, J., said that the complainant's argument amounted to this, that because before May 23rd she was a person aggrieved, she was a "person aggrieved" on that date, though, in point of fact, it was someone else who was aggrieved. He declined to hold that the legislature had created a status whereby persons who were once aggrieved were always aggrieved.

(*b*) As to "premises" and "owner," see definitions in s. 4, *ante*, pp. 7, 8.

(*c*) By 18 & 19 Vict. c. 121, s. 12, a local authority might cause complaint to be made of a nuisance, and justices might order it to be abated. By 23 & 24 Vict. c. 77, s. 13, on complaint by an inhabitant, a justice might act as if the person complaining were such authority. By 29 & 30 Vict. c. 90, Part II. (ss. 14—34) of that Act was to be construed as one with the above statutes; and by s. 21, the nuisance authority were required, previous to taking proceedings under 18 & 19 Vict. c. 121, s. 12, to serve a notice on the person by whose acts the nuisance arose, to abate the same within a time specified. It was held that notice was not a necessary preliminary to a complaint by an inhabitant (*Cocker* v. *Cardwell* (1869), L. R. 5 Q. B. 15; 34 J. P. 516). *Per* COCKBURN, L.C.J.: "If the sections had occurred in the same order in one and the same statute, it clearly could not have been said that the last section applied to a private individual when all mention of him was omitted." It would appear, therefore, that an individual need not give notice before proceeding under this section. A person aggrieved may, under this section, make a complaint against a local authority as well as against an individual; but the section does not give justices jurisdiction to entertain a complaint in respect of a nuisance caused by an authority's sewage works (see *R.* v. *Parlby*, on p. 166, *ante*).

(*d*) These incidents and consequences appear in the previous sections.

(*e*) This authority must be given by an order of the court. See s. 102, *ante*, p. 188.

(*f*) See s. 251, *post*. It is presumed that the authority to the constable will be contained in the order.

(*g*) See s. 102, *ante*, p. 188.

Power of officer of

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default (*a*) in doing their duty

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police to proceed in certain cases against nuisances.

in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner (*b*) or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice (*c*), for the purpose of carrying into effect this enactment.

(*a*) The M. of H. are not likely to proceed under this section unless the circumstances are very exceptional and they are satisfied that the authority have generally neglected their duty in the matter of nuisances. The L. G. B. once pointed out that no action which they could take as regards a particular nuisance would bring the case before any other tribunal than that before which it would come if the person aggrieved were himself to institute proceedings under s. 105. As to the application of s. 299 to such cases, see the notes to that section.

(*b*) See s. 251, *post*, and as to the courts referred to, see s. 104, note (*f*), *ante*, p. 191.

(*c*) See s. 102, *ante*, p. 188, and the preceding section.

Local authority may take proceedings in superior court for abatement of nuisances.

107. Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior court of law or equity (*a*) to enforce the abatement or prohibition of any nuisance under this Act (*b*), or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purposes of this Act (*c*).

When the Attorney-General must be a party.

(*a*) Now in the High Court of Justice. As to the various legal remedies for a nuisance, see s. 111, *post*, p. 210, and the notes thereto. Proceedings under this section for the abatement or prohibition of a public nuisance must be taken in the name of the Attorney-General unless some proprietary right of the local authority has been interfered with (*Wallasey L. B.* v. *Gracey* (1887), 36 Ch. D. 593; 51 J. P. 740; *Tottenham U. D. C.* v. *Williamson*, [1896] 2 Q. B. 353; 60 J. P. 725). See also *Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277; 63 J. P. 502; *Mayor of Devonport* v. *Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; and *Att.-Gen.* v. *Ashbourne Recreation Ground*, [1903] 1 Ch. 101; 67 J. P. 73.

Where a nuisance affects property of which they are the owners, an authority, in addition to the right of acting as relators in an action by the Attorney-General, may themselves maintain an action for damages (*Att.-Gen.* v. *Logan*, [1891] 2 Q. B. 100; 55 J. P. 615). In *Boyce* v. *Paddington Borough Council*, [1903] 1 Ch. 109; 67 J. P. 23, BUCKLEY, J., laid down the following propositions: "A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with . . .; and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage, peculiar to himself, from the interference with the public right." The actual decision was reversed, [1903] 2 Ch. 556; 68 J. P. 49, the Court of Appeal holding on the facts that the rights of the public were involved, and that the Attorney-General must be joined, but the above propositions were not questioned; nor were they discussed in the House of Lords where the original decision was restored (*Paddington Borough*

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Council v. *Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41). See also *Sheringham U. D. C.* v. *Holsey* (1904), 91 L. T. 225; 68 J. P. 394; *Wednesbury Corporation* v. *Lodge Holes Colliery Co., Ltd.*, [1907] 1 K. B. 78; 71 J. P. 73; reversed, [1908] A. C. 323; 72 J. P. 417; *Cavan C. C.* v. *Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250; and *Att.-Gen.* v. *Pontypridd Waterworks Co., infra.* It has been said, however, that the Attorney-General represents the public as a whole, and not small portions thereof; thus, in the case of rights vested in a parish council, it was held that such council was a necessary party (*Att.-Gen. and Spalding R. D. C.* v. *Garner*, [1907] 2 K. B. 480; 71 J. P. 357; but see hereon, *Weir* v. *Fermanagh C. C.*, [1913], 1 I. R. 63, 193).

Where an action to which the Attorney-General is a necessary party has been launched without him, see, as to the terms upon which he will afterwards be added as co-plaintiff, *Att.-Gen.* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388; 72 J. P. 48. The jurisdiction of the Attorney-General to decide in what cases it is proper for him to sue on behalf of relators is absolute (*London C. C.* v. *Att.-Gen.*, [1902] A. C. 165; 66 J. P. 340).

As to the procedure for obtaining the *fiat* of the Attorney-General, see Garrett on Nuisances, 2nd ed., pp. 360—362; Daniell's Chancery Forms, 5th ed., by Burney, p. 33. There is jurisdiction under R. S. C., Order XXXVI., to order the transfer of an action *ex relatione* from the Chancery to the King's Bench Division, even where according to the usual practice of the Attorney-General, the choice of the division in which the action was originally brought was left entirely to the relator and co-plaintiff. And the co-plaintiff cannot assert the prerogative of the Crown to choose its own tribunal (*Att.-Gen.* v. *Wilson* (1900), 70 L. J. Ch. 234; 83 L. T. 646).

When injunctions will be granted.

In a case where it was found that a nuisance had existed at the date of the writ, but had since been remedied, SWINFEN EADY, J., held that it would not be proper to grant an injunction, nor even to give liberty to apply for one in the same action, because any future nuisance would require to be proved, and that could as well be done in a fresh action (*Att.-Gen.* v. *Squires & Sons* (1906), 70 J. P. N. 545; *cf. Att.-Gen.* v. *Keymer Brick Co.* (1903), 1 L. G. R. 654; 67 J. P. 434). See, however, *Chester* (*Dean and Chapter of*) v. *Smelting Corporation* (1901), 85 L. T. 67; 18 T. L. R. 743, where FARWELL, J., said that "it is almost a matter of course for an injunction to be granted when damage has been proved"; and *Dams* v. *Locke-King*, Times, May 23rd, 1908, where PARKER, J., said that his view had always been that if there was no reasonable probability of a nuisance being continued, the court would not grant an injunction but that, otherwise, abatement of a nuisance was not an answer. See also *Att.-Gen.* v. *Dorin*, [1912] 1 Ch. 369; 76 J. P. 181, where an injunction was refused, the defendant having expressly disclaimed any intention to do the act originally contemplated; and cases cited on p. 65, *ante*, as to the discretion of the court when the Attorney-General claims an injunction to restrain a breach of a statutory provision. An injunction will not be granted when the injury complained of is trivial (*Llandudno U. D. C.* v. *Woods*, [1899] 2 Ch. 705; 63 J. P. 775; *Behrens* v. *Richards*, [1905] 2 Ch. 614; 69 J. P. 381).

For a case in which an injunction was suspended during the war, see *Gt. Cent. Ry.* v. *Doncaster R. D. C.*, 87 L. J. Ch. 80; 82 J. P. 38.

Section limited to nuisances "under this Act."

(*b*) It must be noticed that the local authority is not empowered by this section to institute proceedings in the case of any nuisance not the subject of this Act, and though such authority might like any other corporate body prosecute indictments for common law nuisances, there would be a great question whether they could charge the expenses on their rates or funds. See, however, the judgment of WILLS, J., in *R.* v. *Parlby*, *ante*, p. 166. And, of course, an authority may sue to protect their own *property* from the effects of any public nuisance. See note (*a*), *supra*.

18 & 19 Vict. c. 121, s. 30, confined this power to nuisances within the area of the jurisdiction of the local authority, but this restriction is removed by the text. And see the next section.

(*c*) See Part VI., *post*.

Power to proceed where cause of nuisance

108. Where a nuisance under this Act (*a*) within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district (*b*), the local

Section 108.

authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district (*c*); so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

arises without district.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority (*d*) in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority (*d*).

(*a*) The reference is to s. 91, *ante*, p. 165, and perhaps also to s. 114, *post*, p. 215.

(*b*) This clause removes the difficulty disclosed in *R.* v. *Cotton* (1858), 1 El. & El. 203; 23 J. P. 532. There brewers in the parish of R. poured refuse into a river in that parish, thereby creating a nuisance in the same river in the parish of D. It was held that the local authority in D., whose jurisdiction did not include R., could not legally complain, and that the justices could make no order.

(*c*) See ss. 91—103, *ante*, pp. 165–189. See as to the jurisdiction of the justices in detached parts of counties, 11 & 12 Vict. c. 42, s. 7.

(*d*) By the P. H. (London) A., 1891, s. 14:

Application of section to metropolis.

"(1) Where a nuisance liable to be dealt with summarily under this Act appears to be wholly or partially caused by some act, default, or sufferance committed or taking place without the district the inhabitants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences as if such act, default, or sufferance were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place.

"(2) Section one hundred and eight of the Public Health Act, 1875, set out in the First Schedule to this Act, shall continue to extend to London, with the substitution of a sanitary authority under this Act for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act."

Section 108 originally concluded with a definition of "nuisance authority," but this was rendered unnecessary by s. 14 (2) of the London Act, *supra*, and was accordingly repealed by that Act.

The sanitary authorities in the metropolis are, in the city, the court of common council, and, elsewhere, the metropolitan borough councils. See the provisions of the P. H. (London) A., 1891, s. 99 (1), as amended by the City of London Sewers Act, 1897, and the London Government Act, 1899.

109. Where two convictions against the provisions of any Act relating to the overcrowding of a house (*a*) have taken place within a period of three months (whether the persons convicted were or were not the same) a court of summary jurisdiction (*b*) may on the application of the local authority of the district in which the house is situated direct (*c*) the closing of the house for such period as the court may deem necessary.

Provision in case of two convictions for overcrowding

Note to Section 109.

(*a*) See s. 91, *ante*, p. 165.

(*b*) See the definition, *ante*, p. 36.

(*c*) It is not stated how the direction is to be given. But it is presumed that the court must make an order, and for this purpose there must be a proper complaint, and the party complained of must be duly summoned and heard on his defence, unless, indeed, the section means that the court can direct the closing of the house as part of the adjudication on the second information. The words, however, hardly support this construction. The provision is discretionary upon the court.

Provision as to ships.

110. For the purpose of the provisions of this Act relating to nuisances (*a*), any ship or vessel lying in any river harbour or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board (*b*), and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge (*c*) of any officer bearing her Majesty's commission, or to any ship or vessel belonging to any foreign Government.

(*a*) See s. 91, *ante*, p. 165. For the provisions as to canal boats used as dwellings, see 40 & 41 Vict. c. 60, and 47 & 48 Vict. c. 75, in App. I., *post*, Vol. II. By the Public Health (Ships) Act, 1885, *post*, the above section is to have effect, not only for the purpose of the provisions of this Act relating to nuisances, but also for the purposes of such of the provisions of this Act relating to infectious diseases as are referred to in the Schedule of the Act of 1885, *i.e.*, the provisions contained in the following sections of this Act—120, 121, 124, 125, 126, 128, 131, 132 and 133.

(*b*) The L. G. B. prescribed this by order in several cases. There is some difficulty as to the distance out at sea. It has been considered that three miles from the shore is the proper limit, if indeed the water herein mentioned applies to the sea which, it has been contended, should have been mentioned specifically, as it is in s. 130, *post*, p. 237. See the Territorial Waters Jurisdiction Act, 1878, which makes foreigners on board foreign ships, passing within three miles of the English coast, subject to the English criminal law.

As to the jurisdiction of a port sanitary authority, see s. 288, *post*.

(*c*) These words are in addition to the terms used in the repealed Act, and prevent the exemption from operating in respect of Government vessels lent to public bodies for special purposes.

Provisions of Act relating to nuisances not to affect other remedies.

111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right remedy or proceeding under any other provisions of this Act or under any other Act, or at law or in equity (*a*):

Provided that no person shall be punished (*b*) for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment.

(*a*) See also ss. 340 and 341, *post*.

Ordinary remedies for nuisance

A public or common nuisance is an offence against the public, being either the doing of a thing to the annoyance of all the King's subjects, or the neglecting to

do a thing which the common good requires: 1 Hawk. P. C., ch. 32, s. 4. The usual remedy for a public nuisance is by indictment; it is a misdemeanor punishable by fine or imprisonment or both. Whenever special or particular damage is sustained by an individual from a public nuisance, an action for damages is maintainable, provided that the damage is direct and substantial (Addison on Torts, p. 10; *Soltau* v. *De Held* (1851), 21 L. J. Ch. 153; *Benjamin* v. *Storr* (1874), L. R. 9 C. P. 400). An injunction may also be obtained to restrain the continuance of a public nuisance (see *Att.-Gen.* v. *L. & N. W. Rail. Co.*, [1900] 1 Q. B. 78; 63 J. P. 772); but the Attorney-General must be a party to the proceedings unless the plaintiff has sustained special damage (*Soltau* v. *De Held, supra*; *Att.-Gen.* v. *Shrewsbury Bridge Co.* (1882), 51 L. J. Ch. 746; 46 L. T. 687; *Campbell* v. *Paddington Corporation*, [1911] 1 K. B. 869; 75 J. P. 277; *Tottenham U. D. C.* v. *Williamson*, [1896] 2 Q. B. 353; 60 J. P. 725; and other cases in notes to s. 107, *ante*, p. 207; and see Daniell's Chancery Practice, 7th ed., pp. 1338 *et seq.*). For a private nuisance the remedy is by an action for an injunction or for damages or both. "To constitute a public nuisance, the thing must be such as in its nature or in its consequences is a nuisance—an injury or a damage to all persons who come within the sphere of its operation, although it may be so in a greater degree to some than it is to others. For example, take the case of the operations of a manufactory, in the course of which operations volumes of noxious smoke or of poisonous effluvia are emitted. To all persons who are at all within the reach of these operations, it is more or less a nuisance in the popular sense of the term. It is true that to those who are nearer to it it may be a greater nuisance, a greater inconvenience than it is to those who are more remote from it; but still, to all who are at all within reach of it, it is more or less a nuisance or inconvenience" (*per* KINDERSLEY, V.-C., in *Soltau* v. *De Held, supra*).

Note to Section 111.

(*b*) Proceedings taken under the previous sections to procure proper privy accommodation or the removal of refuse, would not be considered as punishment. In *R.* v. *Wigg* (1705), Salk. 460, it was held that a statutory provision which enabled swine kept in the streets of London to be seized and sold, did not prevent a party from being indicted for a common nuisance in so keeping them.

"Punished."

OFFENSIVE TRADES.

112. Any person who, after the passing of this Act (*a*), establishes within the district of an urban authority (*b*), without their consent in writing (*c*), any offensive trade (*d*); that is to say, the trade of—

Blood boiler, or
Bone boiler, or
Fellmonger, or
Soap boiler, or
Tallow melter, or
Tripe boiler, or
Any other noxious or offensive trade business or manufacture (*e*),

shall be liable to a penalty (*f*) not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty (*f*) not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

Restriction on establishment of offensive trade in urban district.

(*a*) The P. H. A., 1848, s. 64, made similar provision for such businesses established after the date when that Act became applicable to any particular district; probably, therefore, few such businesses now exist in old urban districts without such consent.

Effect of section.

(*b*) This and the three following sections with regard to offensive trades are only applied by the Act to urban districts. If a rural council desire to be invested with these powers they must apply to the M. of H. for the necessary order under s. 276.

Rural districts.

Note to Section 112.

As it is not the practice of the Ministry under ordinary circumstances to declare the provisions to be in force throughout a rural district, the application should be confined to the particular parish or parishes in which offensive trades have been or are likely to be established. See also note (*d*) to s. 113.

In the case of a rural district or parish becoming subject to these provisions in pursuance of an order under s. 276 the date of the operation of the order will presumably be the date of the "passing of this Act" for the purposes of the section.

Consent

(*c*) This Act does not, as the P. H. A., 1848, did, prescribe how the consent should be given. The local authority should pass a resolution, and notice thereof should be given to the applicant for consent. An appropriate form will be found in the Encyclopædia of Forms and Precedents, Vol. X., at p. 478.

Sanction to carry on an offensive trade was granted by a Scotch local authority subject to a certain condition. The traders afterwards brought an action to have it declared that the condition was *ultra vires*, and that the sanction was as valid as if the condition had not been inserted. It was held that, whether the insertion of the condition was or was not *ultra vires*, the action was incompetent, the condition being an inseparable part of the sanction as granted by the authority which alone had power to grant it (*Darney* v. *Calder District Committee* (1904), 7 F. 239).

"Establishment" of a business.

(*d*) The offence would be committed by the establishment of the business, *i.e.*, by the beginning to work, and not by the mere erection of the building or premises. But notice of the objection to the establishment of the business should be given as soon as possible.

Slaughtering.

A market company, on whose premises cattle had never been slaughtered before, erected a building in which they allowed persons to slaughter cattle on payment of 2*s.* a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. It was held that the company were liable under the corresponding provisions of the P. H. A., 1848, s. 64, for having "newly established" the business of slaughterers of cattle (*Liverpool Cattle Market Co.* v. *Hodson* (1867), L. R. 2 Q. B. 131; 31 J. P. 245). The trade of a slaughterer of cattle, which was included in s. 64, does not appear in the present section, being specially provided for by ss. 169, 170, *post*, pp. 389, 393.

The business of a butcher, though involving the slaughtering of beasts on the premises, was held not to be necessarily an "offensive, noisy or noisome trade," within the meaning of a restrictive covenant, in a lease (*Cleaver* v. *Bacon* (1887), 4 T. L. R. 27; *Rapley* v. *Smart* (1893), 10 T. L. R. 174).

Bone boiling or steaming.

The C. company, without leave of the sanitary authority, carried on a business of steaming bones by screwing them down in metal cylinders hermetically sealed, and introducing dry steam, which stripped the bones and caused no offensive smell, no water being used in the process:—*Held*, that quarter sessions were right in quashing a conviction of the company under this section in respect of an "offensive" trade of bone boiling (*Cardiff Manure Co.* v. *Cardiff Union* (1890), 54 J. P. 661). Bone boiling may, of course, be an actionable nuisance: see *Verco* v. *Morris* (1881), 26 Sol. J. 126.

Brick burning.

An injunction was granted to restrain a person from burning bricks on his own land so as to be a nuisance to a neighbour (*Walter* v. *Selfe* (1851), 20 L. J. Ch. 433. See also *Att.-Gen.* v. *Keymer Brick Co., Ltd.* (1903), 67 J. P. 434; 1 L. G. R. 654). But in *Cleeve* v. *Mahaney* (1861), 25 J. P. 819, where the nuisance was temporary only, KINDERSLEY, V.-C., refused to grant an *interim* injunction to enable the plaintiff to bring his action at law. He held that the question whether brick-burning is a nuisance must depend upon circumstances, and that no general rule as to distance could be laid down. In *Hole* v. *Barlow* (1858), 4 C. B. (N.S.) 334; 22 J. P. 530, an action for a nuisance arising from the burning of bricks on the defendant's own land near to the plaintiff's dwelling-house, BYLES, J., told the jury that no action lay for the reasonable use of a lawful trade in a convenient and proper place, even though someone might suffer inconvenience from its being so carried on; and he left to the jury two questions: (1) Was the place in which the bricks were burned a proper and convenient place for the purpose? and (2) if it was, was the nuisance such as to make the enjoyment of life and property uncomfortable? It was held that this was a proper direction. This case was overruled, however, by the Exchequer Chamber in *Bamford* v. *Turnley* (1862), 3 B. & S. 62. There it was held that where a man by

Note to Section 112.

an act on his own land, such as burning bricks, causes so much annoyance to another in the enjoyment of a neighbouring tenement as to amount primâ facie to a cause of action, it is no answer that the act was done in a proper and convenient spot, and was a reasonable use of the land. It was also held that the fitness of the locality does not prevent the carrying on of an offensive, though lawful, trade from being an actionable nuisance; but whenever, taking all the circumstances into consideration, including the nature and extent of the plaintiff's enjoyment before the act complained of, the annoyance is sufficiently great to amount to a nuisance, an action will lie whatever the locality may be. An injunction was granted to restrain brick-burning in *Beardmore* v. *Tredwell* (1862), 31 L. J. Ch. 892; 7 L. T. 207; but the remarks of STUART, V.-C., who followed *Hole* v. *Barlow, supra*, must be read subject to the decision in *Bamford* v. *Turnley, supra*. The latter case was followed in *Cavey* v. *Ledbitter* (1863), 13 C. B. (N.S.) 470, but ERLE, C.J., added that it would be a misdirection if a judge told a jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to consider also any evidence showing that the act complained of was one of ownership on the part of the defendant, which was clearly lawful if it did not cause discomfort to a neighbour, and that it was done with full intention to prevent discomfort in respect of time and place and manner and degree. In *Wanstead L. B.* v. *Hill* (1863), 13 C. B. (N.S.) 479, it was held that the business of *brick-making* was not of itself a noxious or offensive business within the meaning of the corresponding clause in the P. H. A., 1848. The court held that the business must be of a noxious or offensive nature analogous to those specified at the beginning of the clause. WILLES, J., observed, that "it is necessary to be extremely cautious in construing this Act, whereby trades are brought within the jurisdiction of justices." He said that "the substances, which are dealt with in the trades which are specified, are substances which, without anything being done to them, must be, or by progress of time must necessarily become, a nuisance and annoyance to the neighbourhood." Persons aggrieved by brick-burning must, therefore, have recourse to their ordinary remedy by action for damages or an injunction. The principles on which an injunction will be granted or refused have been already indicated. An injunction was refused in *Luscombe* v. *Steer* (1867), 17 L. T. 229; 15 W. R. 1191; and granted in *Roberts* v. *Clarke* (1868), 18 L. T. 49; *Bareham* v. *Hall* (1870), 22 L. T. 116; *White* v. *Jameson, ante*, p. 177; and *Dunston* v. *Neale* (1885), 1 T. L. R. 462. In *Crawford* v. *Hornsea Steam Brick and Tile Co.* (1876), 45 L. J. Ch. 432; 34 L. T. 923, where damages instead of an injunction were awarded, a memorandum of the decree was ordered to be indorsed on the plaintiff's title deed.

"Other noxious or offensive" trade, etc.

In *Cardell* v. *Newquay L. B.* (1875), 39 J. P. 742, the Court of Queen's Bench decided that they could not hold that the manufacturing of manure was of itself a noxious and offensive trade, and there being no evidence of its being noxious or offensive to the locality, they held that no penalty was incurred: see also *Cardiff Manure Co.* v. *Cardiff Union*, on p. 212, *ante*. But such a manufacture may be within the provisions of the Alkali Works Regulation Act, 1906, mentioned below. And s. 114, *post*, p. 215, may apply, see *Malton Board of Health* v. *Malton Farmers Manure Co.*, in notes thereto. And, of course, manure works may be an actionable nuisance, see *Knight* v. *Gardner* (1869), 19 L. T. 673 (manufacture from night soil); *Att.-Gen.* v. *Thames Fish Guano and Oil Co.* (1896), Times, February 29th; *Att.-Gen.* v. *Plymouth Fish Guano and Oil Co., Ltd.*, on p. 173, *ante*.

Manure works.

The business of cow-keeping in a borough may be so conducted and regulated as not to be a nuisance or offensive (*Manson* v. *Forrest* (1887), 14 Ct. of Sess. Cas. (4th ser.) 802).

Cow-keeping.

In *Passey* v. *Oxford L. B.* (1879), 43 J. P. 622, the appellant set up the business of a rag and bone merchant, and the justices convicted him under this section, holding as a fact that the business was noxious and *ejusdem generis* with those specified in the section. It was held that the conviction was right.

Rag and bone trade.

In *Braintree L. B.* v. *Boyton* (1885), 48 J. P. 582; 52 L. T. 99, it was held that this section did not apply to the keeping of a fried-fish shop, which was not a place necessarily offensive. But a fried-fish shop might be within the provisions of s. 114, *post*, p. 215; see that section and *Houldershaw* v. *Martin*, in the notes thereto. It may also be an actionable nuisance (*Adams* v. *Ursell*, [1913] 1 Ch. 269); *Errington* v. *Birt* (1911), 105 L. T. 373. And compare *Duke of Devonshire* v. *Brookshaw* (1899), 63 J. P. 569; 81 L. T. 83.

Fried fish shops.

Note to Section 112.

An injunction was granted, restraining the defendant, a restaurant keeper, from allowing the escape of noxious odours to the injury of his neighbours' premises (*Doré* v. *Pecorini* (1887), 31 Sol. J. 726). See also *Sanders-Clark* v. *Grosvenor Mansions Co.*, on p. 173, *ante*.

Restaurants.

Hospital.

A small-pox hospital is not a noxious or offensive business within the meaning of this section (*Withington L. B.* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 19; 57 J. P. 340). See also as to hospitals for infectious diseases, cases in notes to s. 131, *post*, p. 238.

Gut-scraping.

As to gut-scraping and sorting, see *London C. C.* v. *Hirsch* (1899), 63 J. P. 822; 81 L. T. 447.

Cockle boiling.

The L. G. B. expressed the opinion that it was open to doubt whether the business of boiling shell fish could be regarded as an offensive trade within the meaning of s. 112, and that with regard to any nuisance arising from deposits of shells, the appropriate remedy would be the enforcement of the nuisance provisions of the Act. They drew attention to the definition in s. 91 (4).

Bill-posting.

The trade of bill-posting has been held to be an "offensive" trade within the meaning of those words in a restrictive covenant applicable to the land on which the defendants erected an advertisement hoarding (*Nussey* v. *Provincial Bill Posting Co.*, [1909] 1 Ch. 734).

Other actionable nuisances from trade odours.

It is, of course, impossible to enumerate the various trades which are noxious or offensive within the meaning of this section. Nor are cases in which the court has interfered at the suit of persons aggrieved any guide in the determination of the question whether such trades are noxious or offensive, for a trade not noxious may be so conducted as to be an actionable nuisance, as has been already stated with reference to brick-burning. The following cases, in addition to those mentioned above, may be referred to as instances of actionable nuisances arising from trades or manufactures: vapours and smells from candle-making (*Bliss* v. *Hall* (1838), 4 Bing. N. C. 183); from fat smelting (*Att.-Gen.* v. *Cole*, [1901] 1 Ch. 205; 65 J. P. 88); from arsenic works (*R.* v. *Garland* (1851), 15 J. P. 260); from copper works (*Bankart* v. *Houghton* (1859), 28 L. J. Ch. 473; *St. Helen's Smelting Co.* v. *Tipping* (1865), L. R. 1 Ch. 66; 29 J. P. 579); from glass works (*Savile* v. *Kilner*, on p. 173, *ante*); coke ovens (*Salvin* v. *North Brancepeth Coal Co.* (1874), L. R. 9 Ch. 705); smoke from cement works (*Umfreville* v. *Johnson* (1875), L. R. 10 Ch. 580); the manufacture of tar, sulphate of ammonia and anthracene (*Bigsby* v. *Dickinson* (1876), 4 Ch. D. 24); chemical works (*Brooke* v. *Wigg* (1878), 8 Ch. D. 510); pig keeping (*Att.-Gen.* v. *Squire* (1907), 5 L. G. R. 99); smell from burning refuse (*Att.-Gen.* v. *G. C. Rail. Co.*, on p. 173, *ante*); deposit of house refuse (*Att.-Gen.* v. *Keymer Brick and Tile Co.* (1903), 67 J. P. 434; 1 L. G. R. 654). As to a public laundry coming within a restrictive covenant, see *Knight* v. *Simmonds*, [1896] 2 Ch. 294.

Effect of authority's consent.

The authority's consent merely renders the establishment of a noxious trade no breach of the section. It cannot legalise what would otherwise be actionable or illegal. A business within the section may be carried on so as not to amount to a nuisance at common law; but the statute forbids the very establishment of it without the consent of the authority, and if, when established with their consent, the business is so carried on as to be a nuisance, the ordinary remedies (see s. 111, *ante*, p. 210) will be available against the person so carrying it on.

The Alkali, etc. Works Regulation Act, 1906, regulates certain noxious or offensive trades, and is set out in App. I., *post*, Vol. II. See also the Explosives Act, 1875, and the Acts relating to the storing and safe keeping of petroleum (34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; 44 & 45 Vict. c. 67, in App. I., *post*, Vol. II.).

For the powers and duties of local authorities as to bakehouses and laundries, see the Factory and Workshop Acts, 1901 and 1907, in App. I., *post*, Vol. II., and note to s. 10, *ante*, p. 41.

The P. H. A., 1907, s. 51.

(*e*) As to the words "any other noxious or offensive trade, business or manufacture," see cases in preceding note, especially *Wanstead L. B.* v. *Hill*. These words are repealed in any district in which s. 51 of the P. H. A., 1907, *post*, has been put in force by order of the L. G. B. or M. of H., and the following words are substituted, "any other trade, business, or manufacture, which the local authority declare by order confirmed by the M. of H., and published in such manner as the Ministry direct, to be an offensive trade." Moreover, the local authority of such a district are empowered to make byelaws with respect to any trade which is an

offensive trade under s. 112 of the Act of 1875, as amended by the Act of 1907, whether established before or after the commencement of the latter Act, in order to prevent or diminish any noxious or injurious effects of the trade. **Note to Section 112.**

The L. G. B. pointed out to a district council that an offensive trade which is not referred to by name in s. 112 of the Act of 1875, and which would, under that Act, have required the consent of the district council to its establishment, may under the later enactment, when put in force by order of the Board, be established without such consent unless it is specifically declared to be an offensive trade by order confirmed by the Board. They considered that a district council should be prepared to declare by order under s. 51 of the Act of 1907, as soon as it came into operation, every trade to which they consider it applicable (other than a trade specifically mentioned in s. 112).

In 1909 the L. G. B. declared s. 51 to be in force in C. In 1911 the appellants, without the consent of the authority, established in C. the business of dealers in raw hides and skins, which is not one of the six offensive trades particularly specified in s. 112. In 1912 the authority made an order whereby the trade of a dealer in raw hides and skins was declared to be an offensive trade, and this order was duly confirmed. On a summons against the appellants for carrying on their business at a date subsequent to the confirmatory Order, it was held that they were not liable to a penalty, for the business was not unlawful at the date of its establishment (*Butchers' Hide, Skin and Wool Co., Ltd.* v. *Seacome*, [1913] 2 K. B. 401 ; 77 J. P. 219) ; and see also *Mayo* v. *Stazicker*, [1921] 2 K. B. 196 ; 85 J. P. 141.

The Board and their successors, the M. of H., have confirmed orders made by district councils under the section as amended by the Act of 1907 dealing with the following trades amongst others : Animal charcoal manufacturer, blood albumen maker, bone burner, candle maker, dealer in blood, rags, bones, hides, skins, or butchers' waste, fat melter, fish curer, fish fryer, manure maker, glue maker, gut-scraper, parchment maker, size maker, poultry meal manufacturer, tallow refiner, and tanner.

(*f*) As to the recovery of the penalty, see s. 251, *post*.

113. Any urban authority (*a*) may from time to time make byelaws (*b*) with respect to any offensive trades (*c*) established with their consent (*d*) either before or after the passing of this Act, in order to prevent or diminish the noxious or injurious effects thereof. Byelaws as to offensive trades in urban district.

(*a*) See note (*b*) to preceding section.

(*b*) See ss. 182—186, *post*, as to the making, confirmation, and publication of byelaws, and s. 251, *post*, as to the enforcing of them. See also note (*e*) to preceding section and notes to s. 51 of the P. H. A., 1907, *post*.

The M. of H. issue model byelaws under this section, in respect of certain trades.

(*c*) These words are general, and are not confined to any specified trades. See the preceding section and notes thereto as to the trades which can be regulated.

(*d*) See s. 112 and note (*a*) thereunder. If a rural district council obtain urban powers as to offensive trades, it follows from this provision that they cannot make and enforce byelaws as to trades already established in their district. See, however, s. 51 of the P. H. A., 1907, note (*e*) to preceding section, and note (*b*) to s. 114.

114. Where any candle-house melting-house melting-place or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling burning or crushing bones, or any manufactory building or place used for any trade business process or manufacture causing effluvia (*a*), is certified to any urban authority (*b*) by their medical officer of health, or by any two legally qualified medical practitioners (*c*), or by any ten inhabitants (*d*) of the district of such urban authority (*b*), to be a nuisance or (*e*) injurious to the health of any of the inhabitants Duty of urban authority to complain to justice of nuisance arising from offensive trade.

Section 114. of the district, such urban authority shall (*f*) direct complaint to be made before a justice, who may summon a person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction (*g*).

The court shall inquire into the complaint, and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or (*h*) injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia (*i*), the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier,) shall be liable to a penalty (*k*) not exceeding five pounds nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds :

Provided, that the court may suspend (*l*) its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act (*m*).

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior court of law or equity (*n*) against any person in respect of the matters alleged in such certificate.

(*a*) It will be observed that these trades are not all enumerated in s. 112, and that there is no limitation in this section as to the time when they were established.

(*b*) See note (*b*) to s. 112, and note (*d*) to s. 113. District councils have sometimes found this section useful in the case of offensive trades over which they had been unable or had neglected to obtain control by means of byelaws under s. 113. In rural districts the section must of course be declared to be in force in the particular parish or parishes by order of the M. of H.

Medical certificates.

(*c*) By 49 & 50 Vict. c. 48, s. 27, a registered medical practitioner is defined to mean a person registered under the Medical Acts, *i.e.*, the 21 & 22 Vict. c. 90, and any Acts amending the same. By 21 & 22 Vict. c. 90, s. 37, the certificate will be invalid unless both the medical practitioners signing it are duly registered. And by s. 27 of the same Act a copy of the medical register, purporting to be printed and published by the registrar of the general council under the direction of the council, is evidence of registration.

(*d*) As to the meaning of the word "inhabitants," see *Chilton* v. *London Corporation* (1878), 7 Ch. D. 735 ; *Hough* v. *Clark* (1907), 23 T. L. R. 682. It is presumed that the word here applies to *residents* in the district. For a form of certificate for use under this section, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 479.

"Nuisance *or* injurious to health."

(*e*) If the effluvia amount to a nuisance in the sense of causing annoyance and discomfort, it is sufficient to bring the trade within this section without proving also that injury to health results from such effluvia (*Malton Board of Health* v. *Malton Farmers' Manure Co.* (1879), 4 Ex. D. 302 ; 44 J. P. 155). This case has been followed with reference to similar words in ss. 47 and 91, *ante*, pp. 116, 165. And in *Houldershaw* v. *Martin* (1885), 49 J. P. 179 ; 1 T. L. R. 323, it was held that the

medical officer's certificate under this section was sufficient, though it stated simply that a fried-fish shop was a nuisance, and did not further state that it was injurious to health. **Note to Section 114.**

(*f*) It appears that the authority must proceed. They should, however, have a proper certificate in writing, supported by some reasonable evidence to satisfy them as to the propriety of taking the requisite steps. It is not necessary for the authority before taking proceedings to serve notice under s. 94, *ante*, p. 176 (*Bird* v. *St. Mary Abbotts, Kensington* (*Vestry of*), [1895] 1 Q. B. 912; 59 J. P. 391). Duty of local authority.

(*g*) See the definition, *ante*, p. 36. Though the court must inquire into the complaint, still a primâ facie case should be laid before it so as to justify a summons.

(*h*) See note (*e*), *supra*.

(*i*) The burden of proving this is on the defendant. See also the S. J. Acts, 1848, s. 14 (as amended by s. 44 and the fourth schedule of the Criminal Justice Administration Act, 1914), and 1879, s. 39 (2). It was on the complainant under 18 & 19 Vict. c. 121, s. 27. Exception.

(*k*) See, as to recovery of this penalty, s. 251, *post*. Although by the text the penalty is not to be less than 40*s*. the court has power to reduce that amount in the case of a first conviction under the S. J. A., 1879, s. 4. Penalty

(*l*) The difficulties which existed in 18 & 19 Vict. c. 121, s. 27, have not been removed in this section. It does not appear what is to be done as to the removal of the suspension, if the works directed by the court be executed, or if they be not executed, or if they fail to effect their object. Probably the court should adjourn the hearing, and after the adjournment, if the works have been done and the nuisance abated, the court might exercise their power under the Probation of Offenders Act, 1907, which empowers them, without proceeding to conviction, to dismiss the information with or without payment of damages or costs, or perhaps the court might make the order with a direction that it was not to be drawn up if certain things were done. Unless, however, there be some determination of the information, there can be no appeal, for in default of a determination of the court there is no cause of appeal. There cannot, therefore, be a *suspension* of the final determination in order to enable the defendant to appeal. By suspension is understood that the court may withhold their order, so as to see whether the party complained of will carry out the directions as to abating the nuisance. Suspension of judgment.

(*m*) See s. 269, *post*, as to appeals. Appeal.

(*n*) That is, in the High Court of Justice, but the authority should carefully weigh the consequences, and be prepared to pay the costs on failure of the proceedings. For a case in which proceedings for an injunction were taken, see *Att.-Gen.* v. *Smith*, Times, June 7th, 1894. See also the cases collected under the notes to s. 107, *ante*, p. 207. Proceedings in superior court.

115. Where any house building manufactory or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority (*a*) is situated without such district (*b*), such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house building manufactory or place were situated within such district; so, however, that summary proceedings (*c*) shall not in any case be had otherwise than before a court having jurisdiction in the district where the house building manufactory or place is situated. Power to proceed where nuisance arises from offensive trade carried on without district.

This section shall extend to the metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated

Section 115.

within the district of a local authority under this Act; or by any urban authority in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority (*d*).

(*a*) See note (*b*) to s. 112.

(*b*) This clause removed any doubt as to whether 18 & 19 Vict. c. 121, s. 27, had any operation in respect of trades carried on *without* the district of the authority. In the case of a rural council who have obtained urban powers under the section in regard to part only of their area, the word "district" will presumably be construed as meaning a contributory place in which the powers are in force.

(*c*) That is under s. 251, *post*.

Application to metropolis.

(*d*) The P. H. (London) A., 1891, s. 21 (5), provides that s. 115 of the P. H. A., 1875, shall continue to extend to London, with the substitution of a sanitary authority under that Act, for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis, or to any building, manufactory, or place in the metropolis which is injurious to health, shall include any nuisance within the meaning of that Act, and any manufactory, building, or place which is dangerous to health. By s. 141 of the same Act, "London" is defined to mean the administrative county of London.

The concluding clause of s. 115, *supra*, which contained a definition of "nuisance authority," was repealed by the P. H. (London) A., 1891. See a similar repeal in s. 108, referred to in the notes thereto, at p. 209.

UNSOUND MEAT, ETC. (*a*).

Power of medical officer of health to inspect meat, etc.

116. Any medical officer of health or inspector of nuisances may at all reasonable times (*b*) inspect and examine any animal (*c*) carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk (*d*) exposed for sale, or deposited in any place (*e*) for the purpose of sale, or of preparation for sale, and intended for the food of man (*f*), the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk appears to such medical officer or inspector to be diseased or unsound or unwholesome or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice (*g*).

The P. H. (Regulations as to Food) A., 1907.

(*a*) In connection with this subject reference may be made to the Public Health (Regulations as to Food) Act, 1907, *post*, under which regulations may be made for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption.

The Tuberculosis Order, 1914.

See also as to tuberculous meat, the Tuberculosis Order, 1914, in App. II., *post*, Vol. II., and Circulars preceding it.

Entry.

(*b*) 18 & 19 Vict. c. 121, s. 11, enabled a justice to grant a warrant to justify entry for the purpose of inspection; no such provision is here made, but if admission is prevented the party preventing is rendered liable to a penalty under s. 118, *post*, p. 226; and see s. 119, *post*, p. 226, as to granting a warrant to search for *concealed food*.

"Reasonable" times.

Sunday is not necessarily an unreasonable time. This question must depend upon the circumstances of the case (*Small* v. *Bickley* (1875), 39 J. P. 422; 32 L. T. 726). In that case a butcher, at his residence, half a mile from his shop, on a Sunday afternoon, was requested to go himself, or send some one with a key, to admit the

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inspector to his shop, in order that some meat there might be examined. He refused, and was convicted under 26 & 27 Vict. c. 117, s. 3, of preventing, obstructing, or impeding the inspector when duly engaged in carrying into execution the provisions of the Act. It was held that although Sunday afternoon might, under some circumstances, be a reasonable time for examining the meat, the butcher at most had refused to assist the inspector, and had not prevented, obstructed, or impeded him within the meaning of the section.

H., an inspector of nuisances, was convicted of perjury on an indictment which alleged that, upon the hearing of an information against G. for exposing for sale a number of rabbits which were unfit for the food of man, it was a material question whether H. had duly inspected and examined the carcases of the rabbits, and whether they had appeared to him to be unfit for the food of man before and at the time when he seized the same under the above section. The indictment then alleged that H. falsely swore (among other things) that he had examined critically every rabbit, and set out the evidence giving the details of such examination; and further alleged that H. did not examine the rabbits in the manner sworn. It appeared that upon two occasions, subsequently to the time of seizure, when he had merely made a cursory examination (sufficient, however, to entitle him to seize the rabbits), he had examined them as he had sworn he had. It also appeared that at the time of the seizure the rabbits were, in fact, unfit for the food of man. It was held that as the indictment did not allege that the evidence was given with reference to the time of seizure, and since the evidence, if taken with reference to the other occasions upon which examinations were made, was perfectly true, all the allegations might be true without H. having sworn falsely, and that, therefore, no offence was disclosed upon the indictment (*R.* v. *Hadfield* (1886), 51 J. P. 344; 55 L. T. 783).

Live animals.

(*c*) In *Moody* v. *Leach* (1880), 44 J. P. 459, a recorder held at quarter sessions that the word *animal* included a live animal. But see *Bothamley* v. *Jolly*, *post*, p. 225. According to the evidence of Drs. Letheby and Tidy, in a case reported at 37 J. P. 267, an animal killed during, or immediately before, or after parturition is unfit for human food; and see *R.* v. *Kempson* (1893), Times, June 27th.

Not all food included.

(*d*) It is to be noticed that these words are specific, and do not include every kind of food. For instance, cheese is not mentioned, and stipendiary magistrates at Manchester and Leeds have respectively held that the section does not extend to putrid butter, or bad eggs exposed for sale (Stone's Justices' Manual, 54th ed., p. 1218).

Where, however, the local authority have adopted the P. H. A., 1890, Part III., s. 28 thereof provides that ss. 116—119 of this Act shall extend and apply to *all* articles intended for the food of man sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale within the district.

The byelaws of municipal corporations sometimes provide for the seizure of unwholesome food; and in *Shillito* v. *Thompson* (1875), 1 Q. B. D. 12; 39 J. P. 773, a defendant was held to be rightly convicted under such a byelaw for selling unwholesome cheese.

"Place."

(*e*) This word is used in a general and unrestricted sense (*Young* v. *Grattridge* (1868), L. R. 4 Q. B. 166; 33 J. P. 260). In *Daly* v. *Webb* (1869), 4 Ir. C. L. R. 309, diseased meat upon a cart passing along a street in Dublin from a slaughter-house to a preserved meat manufactory, was held to have been properly seized under a similar section. In *Williams* v. *Allen*, [1916] 1 K. B. 425; 80 J. P. 55, the unsound meat at the time of seizure was being carried in a cart from a knackers' yard where it had been partially prepared to a slaughter-house where it was to be further prepared for sale. It was held that the meat was deposited in a place for the purpose of preparation for sale within the meaning of this section. *Cf. Neilson* v. *Parkhill*, on p. 224, *post*.

(*f*) It must be carefully noticed that the provision does not apply to food for animals, nor to articles prepared for exportation, for manure or similar purposes.

Duty of officers.

(*g*) The responsibility is imposed on the medical officer or inspector of satisfying himself that the article in question is exposed for sale *or* deposited for the purpose of sale, or of preparation for sale, *and* intended for the food of man; and if he is so satisfied he may seize. As to what constitutes an "exposure" or "deposit" for sale, see *Ollett* v. *Jordan*, [1918] 2 K. B. 41; 82 J. P. 221; *Ollett* v. *Henry*, [1919] 2 K. B. 88; 83 J. P. 165, and the cases mentioned under note (*d*) of the next section.

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It is not necessary for him to give notice to the owner of the goods seized, nor is the justice before whom the goods are taken bound to summon the owner before the condemnation thereof under the next section (*White* v. *Redfern* (1879), 5 Q. B. D. 15; 44 J. P. 87); at the same time the justice may, if he sees fit, hear evidence as to the condition of the article (see note (*b*) to next section). Where the officer knows of the unsound condition of the goods there is no duty upon him to pass this knowledge on to the *vendor* (*Weir* v. *Thomas* (1915), 79 J. P. 54).

The officer cannot himself destroy the articles seized. He must take them to be dealt with by a justice under the next section. If he does destroy them his action is illegal; and, if he is an officer over whose appointment and removal the M. of H exercise no control, the local authority may be liable in damages for his wrongful acts; under such circumstances an authority was held liable in *Ormerod* v. *Rochdale* (*Mayor, etc. of*) (1898), 62 J. P. 153. If, however, the power to appoint and to remove is subject to the control of the Ministry, it is doubtful if the officer can be regarded as the servant of the authority. As to the evidence necessary of the appointment of the officer, see *Kates* v. *Jeffery*, [1914] 3 K. B. 160; 78 J. P. 310. In *Ormerod* v. *Rochdale, supra*, BRUCE, J., was careful to point out that the power to appoint the officer, whose wrongful act gave rise to that action, was vested in the corporation, who were authorised to fix and pay his salary, and had power to remove him. It has since been held that a local authority are not liable for the negligence of an officer appointed by them, *e.g.*, an inspector under the Diseases of Animals Acts, whilst he is discharging duties imposed by order of a Government department (*Stanbury* v. *Exeter Corporation*, [1905] 2 K. B. 838; 70 J. P. 11). See also *Tozeland* v. *West Ham Guardians*, [1907] 1 K. B. 920; 71 J. P. 194; *O'Neill* v. *Drohan and Waterford C. C.*, [1914] 2 I. R. 41; affirmed (at p. 495) on other grounds in the Court of Appeal. In a Canadian case the following principle was approved, viz.: That a municipal corporation is not responsible for the unlawful or negligent acts of officers appointed, in obedience to an Act of the Legislature, to perform public services in which the corporation has no private interest, and from which it derives no special benefit or advantage in its corporate capacity (*Winterbottom* v. *London Police Commissioners* (1901), 1 Ontario L. R. 549). See also *Forsyth* v. *Canniff and City of Toronto* (1890), 20 Ontario R. 478, where it was held that the medical officer of a municipal corporation is not a servant of the corporation so as to make them liable for his acts done in pursuance of his statutory duties. The principle of the above Canadian cases appears to have commended itself to WILLS, J., in *Stanbury* v. *Exeter Corporation, supra*. It has been held that a district medical officer is not under any "contract of service" within the meaning of the Workmen's Compensation Act, 1906 (*Murphy* v. *Enniscorthy Guardians*, [1908] 3 I. R. 609; and *cf. In re National Insurance Act*, [1913] 1 I. R. 244; but these cases were distinguished when a question arose as to a workman employed by a board of guardians who had the right to direct him in his work and of dismissing him at their own pleasure and who were liable to pay his wages: see *Finlay* v. *Tullamore Guardians*, [1914] 2 I. R. 233.

Except where the P. H. A., 1890, s. 28, is in force there must be a proper seizure to justify subsequent proceedings under the next section. See *Vinter* v. *Hind*, in note (*e*) to the next section.

Powers of assistants.

Although the medical officer or inspector may seize and carry away by an assistant, the execution of the powers conferred by the section is personal, and cannot be carried into effect by an assistant medical officer or assistant inspector in the absence of his principal. This view is concurred in by the L. G. B., who have stated that upon receiving instructions from the inspector of nuisances, an assistant may act in the circumstances contemplated by the section, as amended by s. 28 of the Act of 1890, but would not have the power of seizure. Under s. 131 of the Towns Improvement Clauses Act, 1847, he might be specially appointed as an officer of the council with powers conferred by the enactment. Under s. 119 of the Act of 1875, upon obtaining a warrant from a justice he could act in the manner authorised by that section.

Power of justice to order destruction

117. If it appears to the justice that any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk so seized (*a*) is diseased or unsound or unwholesome or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to

prevent it from being exposed for sale or used for the food of man (*b*) ; and the person (*c*) to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found (*d*), shall be liable to a penalty (*e*) not exceeding twenty pounds for every animal carcase or fish or piece of meat (*f*) flesh or fish, or any poultry or game, or for the parcel of fruit vegetables corn bread or flour or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months. **Section 117.** — of unsound meat, etc.

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place.

(*a*) Under this section seizure in accordance with s. 116 is a condition precedent to either condemnation or infliction of a penalty: see *Vinter* v. *Hind*, on p. 225, *post* ; but where s. 28 of the P. H. A., 1890, is in force, such seizure is no longer a condition precedent to either : see *Salt* v. *Tomlinson*, p. 225, *post*. Necessity for seizure.

(*b*) All the justice need do is to inspect the article, and if he is satisfied that it is unsound or unwholesome he is to condemn it, and order it to be destroyed or disposed of so as to prevent its being used for human food. He need not before so doing give notice to, or summon, the owner : see *White* v. *Redfern*, *supra*, s. 116, note (*g*). But he may, if he thinks fit, hear evidence tendered by the owner as to its soundness (*Re Bater and Birkenhead (Mayor, etc. of)*, [1893] 2 Q. B. 77 ; 58 J. P. 7). The evidence must, however, be confined to that point, for the magistrate is not entitled to consider, before condemning an article, whether it was intended for the food of man, or was sold or exposed for sale or deposited in any place for the purpose of sale, but only whether it is unsound or unwholesome, or unfit for the food of man (*Thomas* v. *Van Os*, [1900] 2 Q. B. 448 ; 64 J. P. 582). Jurisdiction of justice.

In *Williams* v. *Narberth Sanitary Authority*, Times, December 7th, 1882, the court expressed an opinion that condemnation on the day after seizure during hot weather in July was bad. In *Burton* v. *Bradley* (1886), 51 J. P. 118, it was held that the text did not require condemnation to be on the same day as the seizure, but that it was enough if reasonable diligence was used.

Several questions of difficulty may arise after the condemnation of the goods seized. It may transpire that the goods were not properly seized, as in *Vinter* v. *Hind*, p. 225, *post*, or that they were not intended for the food of man, or that they were not in fact unsound, etc. In several cases an owner has claimed compensation under s. 308, *post*, in accordance with suggestions made in *White* v. *Redfern*, p. 220, *ante*. In *Re Bater and Birkenhead (Mayor, etc. of)*, *supra*, where the magistrate refused to condemn meat, it was held that the owner was not entitled to refuse to take it back, and could only recover the damage sustained in consequence of its seizure ; but that he was entitled to be repaid the costs reasonably incurred by him in attending and resisting condemnation. In *Davies and Rhondda U. D. C., In re* (1899), 80 L. T. 696, it was held that on an arbitration under s. 308, *post*, the arbitrator has only to consider whether the claimant has suffered damage, and the amount of such damage ; and that the costs of successfully defending a prosecution for exposing for sale unsound meat, the subject of the claim for compensation, cannot be awarded (*Davies and Rhondda U. D. C., In re* (1899), 80 L. T. 696). In a later case, the Court of Appeal held that, where meat has been condemned and destroyed, and the owner claims compensation, the arbitrator has jurisdiction to decide the question whether the meat was in fact sound, and may award as part of the compensation the expenses incurred by the claimant in successfully defending a prosecution (*Walshaw* v. *Brighouse (Mayor, etc. of)*, [1899] 2 Q. B. 286). But this decision was questioned by the Court of Appeal in *Hobbs* v. *Winchester Corporation*, [1910] 2 K. B. 471 ; 74 J. P. 413 : see also *In re Smith and Belfast Corporation*, [1910] 2 I. R. 285. In an action for compensation for the seizure of meat erroneously alleged to be unsound the local authority were held not to be protected by the limitation of time imposed by the Public Authorities Protection Act, 1893 (*Glasgow Corporation* v. *Smithfield and Argentine Meat Co., Ltd.*, [1912] S. C. 364). Owner's remedy in case of unjustifiable seizure or condemnation.

Note to Section 117.

In *In re Smith and Belfast Corporation*, *supra*, an Irish judge held that compensation could not be recovered for general trade loss due to the publicity of the proceedings. In *Hobbs* v. *Winchester Corporation*, [1910] 2 K. B. 46; 74 J. P. 165 (reversed on another ground), CHANNELL, J., held reluctantly on the authority of *Walshaw* v. *Brighouse Corporation*, *supra*, that such general loss was recoverable.

It is now settled that no compensation is recoverable if meat intended for human food is in fact unsound, though the owner does not know it (*Hobbs* v. *Winchester Corporation*, in C. A., *supra*; *In re Smith and Belfast Corporation*, *supra*).

Liability of dealer to retailer who is fined.

If a retailer buys provisions with an implied or express warranty, and such provisions are seized and destroyed, and he himself is fined, because, unknown to him, they are unfit for food, he may recover from his vendor, in addition to their value, the costs of his defence and costs ordered to be paid by him; and, *semble*, also the amount of the fine, if he can show that it was not imposed, or increased, in consequence of any default on his part (*Crage* v. *Fry* (1903), 67 J. P. 240; 1 L. G. R. 253). *Cf. R. Leslie, Ltd.* v. *Reliable Advertising and Addressing Agency*, [1915] 1 K. B. 652.

A butcher bought the carcase of a pig and exposed it for sale. On the same day it was seized as unfit for human food. It was eventually destroyed, and the butcher was fined £20. In an action by him against his vendor, a jury found that the meat was unfit for food; that the purchaser impliedly made known to the defendant the purpose for which the meat was required; that he did so in such a way as to show that he relied on the vendor's skill and judgment; and that the plaintiff had sustained damages (excluding loss of business) £39 16*s.* 2*d.*, and for loss of business, £200. It was held that neither head of damages was too remote (*Cointat* v. *Myham & Son* (1913), 77 J. P. 217). On appeal a new trial was ordered on the ground that the judge misdirected the jury as to the possibility of the "custom of the market" excluding an implied warranty (78 J. P. 193; 30 T. L. R. 282). As to the liability of a butcher to a customer, see note (*b*) to s. 119, *post*, p. 226.

(*c*) As to the word "person," see p. 6, *ante*. In *R.* v. *Ascanio Puck & Co., Ltd.* (1912), 76 J. P. 487; 29 T. L. R. 11, it was held that a limited company could be indicted under the corresponding section of the London Act.

(*d*) In *R.* v. *Blount* (1879), 43 J. P. 383, the defendant was charged with having unlawfully exposed or deposited for sale or preparation for sale certain meat intended for human food. The magistrate dismissed the charge on the ground that the defendant was himself unaware that the meat was upon his premises, as it had arrived there and had been seized in his absence. Subsequently a summons was issued against the defendant in respect of the same seizure for having on his premises meat for the purpose of sale, etc., and the same evidence was given as on the first charge. The defendant was convicted, but the court quashed the conviction on the ground that he might have been convicted of the offence charged on the second summons when he appeared upon the first, and that the second summons was for the same matters.

Section creates two offences.

In *White* v. *Redfern* (1879), 49 L. J. M. C., at p. 22, FIELD, J., said that the section created two offences. It will be prudent, therefore, in issuing a summons, to confine it to one offence, otherwise a conviction founded upon it may be bad for duplicity.

The person liable.

"Belong to."

The appellant was an under-bailiff on N.'s estate, and it was his duty to obey the orders of the head bailiff. Two cows belonging to N. were slaughtered, as they were affected by disease. The appellant was not present; but on the same day he was told by the head bailiff to send the meat to P., and to go there himself to meet it. The appellant went to P. on the following day, and saw a butcher named B., and on the next day the head bailiff, learning that the meat had not been sent off, directed the appellant to take it to a station and consign it to B. The transit of the meat to the station was superintended by the appellant, who took charge of it; and it was sent by train in his name to B. at P., the appellant sending a telegram: "Two carcases of meat sent to you; make best of it." B. replied that the meat, which was then lying at P. station, was of no use to him. The appellant then sent a telegram to the station-master: "Ask consignee to do the best he can. If he can't dispose of it, bury it, and charge sender expenses." The meat was seized while lying at the station, and condemned as unsound. Upon these facts the appellant was convicted of exposing unsound meat for sale, being the person "to whom the same belonged":—*Held*, that there was no evidence that he was the person "to

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whom the meat belonged " within the meaning of this section (*Newton* v. *Monkcom* (1888), 52 J. P. 692 ; 58 L. T. 231).

H. purchased from P., a salesman in a market, meat which was to P.'s knowledge diseased and unfit for food. It had been sent by a person in the country to P. for sale on commission in the usual way. The meat was seized at the shop of H. On a summons against P., under sub-s. (2) of s. 47 of the P. H. (London) A., 1891, it was held that he was not the person to whom the same " belongs or did belong at the time of exposure for sale," within the meaning of sub-s. (2). The court did not express a definite opinion on the point whether, if the meat had been seized when still in the possession of P., it might not properly be said to belong to him (*Billing* v. *Prebble* (1896), 66 L. J. Q. B. 180 ; 61 J. P. 86). They intimated that P. should have been proceeded against under sub-s. (3) of that section, as to which, see *Grivell* v. *Malpas* on p. 224, *post*, and cases cited therewith.

Ownership alone not sufficient where no exposure for sale.

The appellant, a farmer, sent to a London salesman meat, which to his knowledge was unsound, for the purpose of its being sold as human food. The salesman did not expose the meat for sale, but called the attention of an inspector to it. The inspector seized the meat and obtained a justice's order for its destruction. The appellant having been convicted of being the *owner* of unsound meat " unlawfully deposited for the purpose of sale and intended for the food of man," it was held that the conviction must be quashed, for there had been no exposure for sale, and the meat had not been found in the possession or on the premises of the appellant (*Barlow* v. *Terrett*, [1891] 2 Q. B. 107 ; 55 J. P. 632). The last-mentioned case was followed in *Firth* v. *McPhail*, [1905] 2 K. B. 300 ; 69 J. P. 203). There a cow had been killed when at the point of death from inflammation and dressed. The appellant, knowing the circumstances, purchased the diseased carcase, and arranged with a meat salesman to consign it to him for sale. The appellant subsequently deposited the carcase on the premises of the salesman for the purpose of sale for human food. The meat was seized at that place by an inspector and condemned. The appellant was convicted :—*Held*, that as there had been no exposure for sale by the appellant, but only a deposit for purposes of sale upon premises other than his own, he could not be convicted under s. 117, which was not affected by s. 28 of the P. H. A., 1890, and that, accordingly, the conviction must be quashed. The court intimated that upon similar facts an offence would have been committed under s. 47 (3) of the London Act. See as to this, *Grivell* v. *Malpas*, *infra*.

In *Ollett* v. *Jordan*, [1918] 2 K. B. 41 ; 82 J. P. 221, a small consignment of fish had been sent from Hull under an agreement to sell. When unpacked the fish was found to be unsound and the purchaser, exercising his right to accept or reject, rejected them. It was held that there was an " exposure for sale " by the consignor within the meaning of this section.

In *Ollett* v. *Henry*, [1919] 2 K. B. 88 ; 83 J. P. 165, the defendant was the secretary of a company who acted as agents of the Ministry of Food during the war. The company received the meat, distributed it amongst the local butchers, and collected the payments therefor themselves, receiving a commission. It was held that the distribution formed part of the sale of the meat by the Ministry and that the meat was deposited for the purpose of sale within the meaning of the section.

" Possession."

Meat was seized by an inspector in a waggon on premises not occupied by B. and was condemned. It had been delivered at barracks under a contract with B. and rejected as unsound. B. admitted ownership and declared that the meat was good ; he also wired to the medical officer to keep it for further examination on his behalf, and subsequently said that he would have been prepared to sell it if it had not been seized :—*Held*, sufficient to justify a conviction for having had the meat in his possession at the time of seizure (*Bull* v. *Lord* (1911), 9 L. G. R. 829 ; and see also *Williams* v. *Allen* to note (*e*) of last section). The word " possession " in this section must be construed in a popular and not in a narrow sense. See *Webb* v. *Baker*, [1916] 2 K. B. 753 ; 80 J. P. 449. In that case a quantity of rabbits packed in wooden boxes were despatched from London to a workhouse for human consumption. On the following day the cases were opened and the rabbits were found to be in such a state of putrefaction that they were duly condemned and destroyed. It was held that at the time of their seizure the goods were not in the possession of the vendor.

The Glasgow Police Amendment Act, 1890, gives power to seize diseased or

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unsound meat intended for human consumption and exposed for sale, and by s. 20 renders liable in a penalty the person to whom the same belongs, or in whose possession, or on whose premises the same was found. A complaint charging a person with having been found in possession of diseased meat intended for sale for human consumption set forth that the meat was seized in a barrow belonging to the accused, driven by his servant, and under his orders:—*Held*, that there was a relevant averment of "possession" by the accused (*Neilson* v. *Parkhill* (1892), 20 Ct. of Sess. Cas. (4th ser.), J. C. 24).

Upon similar provisions in Scotch Acts it has been held that when a person is charged with having in his possession for human food any meat which is unsound, it is not necessary to prove that he knew of its being on his premises, or of its unsound condition (*Dickson* v. *Linton* (1888), 15 Ct. of Sess. Cas. (4th ser.), J. C. 76). Where a farmer sent meat to a consignee in a meat market, and the meat was seized and condemned in the market, it was held that the meat could not be said to be in the farmer's "possession" as and for human food (*Cairns* v. *Linton* (1889), 16 Ct. of Sess. Cas. (4th ser.), J. C. 81).

Possession for sale sufficient without exposure for sale.

A person having in his possession unsound meat intended for sale for the food of man is liable to be convicted under the above section, notwithstanding that he has not exposed the meat for sale (*Mallinson* v. *Carr*, [1891] 1 Q. B. 48; 55 J. P. 276; followed in *Cork R. D. C.* v. *Walsh*, [1908] 2 I. R. 234). But a person cannot be convicted for having in his possession unsound meat intended for food for himself, his servants, and his workpeople, and not for sale (*Rendell* v. *Hemingway* (1898), 14 T. L. R. 456). *Mallinson* v. *Carr*, *supra*, was distinguished in a case where the facts were as follows: On a Monday morning an inspector visited a butcher's shop which was being cleansed, there being one customer in it. The inspector found a closed safe in the shop; on being opened it was found to contain, besides a quantity of sound meat, some pieces which showed signs of decomposition. It was proved that the safe had not been opened since midnight on the preceding Saturday, and that, in the ordinary course of business, the meat would have been examined after the shop was cleansed before setting it out for sale. It was held that there was no evidence that the meat was deposited for sale, and was intended for the food of man (*Wieland* v. *Butler-Hogan* (1904), 73 L. J. K. B. 513; 68 J. P. 310).

Liability of vendor under P. H. (London) A., 1891.

It may be noticed that neither this Act nor the P. H. A., 1890, contains any provision similar to that in the P. H. (London) A., 1891, s. 47 (3), which provides as follows: "Where it is shown that any article liable to be seized under this section, and found in the possession of any person was purchased by him from another person for the food of man, and when so purchased was in such a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine and imprisonment above-mentioned, unless he proves that at the time he sold the said article he did not know, and had no reason to believe, that it was in such condition." This sub-section was considered in *Grivell* v. *Malpas*, [1906] 2 K. B. 32; 70 J. P. 334. There, an inspector found hanging in the doorway of a butcher some diseased meat, which was taken away by him and condemned by a magistrate. No proceedings were taken against the butcher, as the meat was not exposed for sale, and would not have been sold until passed by the inspector. It had shortly before the visit of the inspector been delivered by the respondent, a wholesale dealer. In a summons against the respondent under the above sub-section:—*Held*, that the words "liable to be seized" meant "primâ facie liable to be seized at the time of the sale by the wholesale dealer by reason of its condition," and that it was not necessary that it should have been sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, by the person who had bought it from the original vendor. Condemnation by a magistrate is apparently not a condition precedent to a prosecution under this sub-section. See *Hewett* v. *Hattersley*, p. 225, *post*, especially *per* Lord ALVERSTONE, C.J. In *R.* v. *Ascanio Puck & Co., Ltd.* (1912), 76 J. P. 487; 29 T. L. R. 11, ROWLATT, J., held that s. 47 (3) does not apply to a case where a purchaser of food which proves to be bad voluntarily gives it up to an inspector. See also as to this sub-section, *R.* v. *Dennis*, [1894] 2 Q. B. 458; 58 J. P. 622; *Billing* v. *Prebble*, *ante*, p. 223.

Accessories.

Persons aiding and abetting the exposure of unsound meat are liable to punishment under s. 5 of the S. J. A., 1848. As to what amounts to aiding and abetting

the exposure of unsound meat for sale, see *Callow* v. *Tillstone* (1900), 83 L. T. 411).

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(*e*) As to the recovery of this penalty, see s. 251, *post*. Upon the hearing of a summons under this section it is not necessary to show that the defendant had personal knowledge of the condition of the meat, etc. seized (*Blaker* v. *Tillstone*, [1894] 1 Q. B. 345; 58 J. P. 184). *Mens rea* is not an element of the offence; and an offence is committed even though reasonable examination would not have disclosed the unsoundness (*Hobbs* v. *Winchester Corporation*, p. 222, *ante*; *Cork R. D. C.* v. *Walsh*, [1908] 2 I. R. 234; *Dickson* v. *Linton*, p. 224, *ante*. But a defendant may escape by showing that meat would have been examined before any exposure for sale, and would have been rejected if found to be bad; in such a case it could not be said to be "deposited for sale and intended for human food," *cf. Wieland* v. *Butler-Hogan*, p. 224, *ante*. The justice inflicting the penalty need not be the justice who issued the summons (*R.* v. *Thomas* (1901), 18 T. L. R. 71).

Mens rea not essential.

Where a medical officer has seized unsound meat and procured its condemnation under ss. 116, 117, a police officer, not being a "person aggrieved" within the meaning of s. 253, *post*, cannot institute proceedings for a penalty without authority from the council, or the consent of the Attorney-General (*Dodd* v. *Pearson*, [1911] 2 K. B. 383; 75 J. P. 343). Under the London Act the position is, however, different. A sanitary inspector, purporting to act on behalf of the sanitary authority, laid an information under s. 47 (2) of the P. H. (London) A., 1891, against the appellant for having on his premises unsound meat intended for the use of man. The inspector had no express authority to take proceedings:—*Held*, that a private individual may take proceedings under that section: that, therefore, it was unnecessary for an inspector to have any authority, and that the words in the information "on behalf of the borough council" could be rejected as surplusage (*Giebler* v. *Manning*, [1906] 1 K. B. 709; 70 J. P. 181; *cf. Lake* v. *Smith* (1912), 76 J. P. 71, and see also *Kates* v. *Jeffery* (1914), 3 K. B. 160; 78 J. P. 310).

Who may prosecute.

The respondent exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards, at the request of an inspector of nuisances, handed it over to him; it was then condemned by a justice as unfit for food. It was held that the meat was not "so seized" as is prescribed by s. 116, and that for that reason the respondent could not be convicted under this section (*Vinter* v. *Hind* (1882), 10 Q. B. D. 63; 47 J. P. 373). But where the P. H. A., 1890, Part III., has been adopted, s. 28 provides that a justice may condemn any article and order it to be destroyed or disposed of under the above section if satisfied on complaint made to him that such article is diseased, unsound, or unwholesome, or unfit for the food of man, although the same has not been seized as mentioned in s. 116; and in such a district seizure in accordance with s. 116 is no longer a condition precedent to a prosecution (*Salt* v. *Tomlinson*, [1911] 2 K. B. 391; 75 J. P. 398). In this case the facts were practically the same as in *Vinter* v. *Hind*. A person, without exposing it for sale sold a live bullock to a butcher knowing that he intended to use it for human food. After killing and cutting up it was hung in the slaughter house, and was there seized and condemned. On an appeal by the vendor against a conviction it was held that the conviction could not stand as there had been no exposure for sale and also because the article which had been seized and condemned was not the article which had been sold by him (*Bothamley* v. *Jolly*, [1915] 3 K. B. 425; 31 T. L. R. 626). It has been decided in a case where an inspector of the Fishmongers' Company himself destroyed unsound fish, that condemnation by a magistrate is not a condition precedent to a prosecution under s. 47 (2) of the London Act (*Hewett* v. *Hattersley*, [1912] 3 K. B. 35; 76 J. P. 369). It would seem that the same rule should hold good in districts where s. 28 of the Act of 1890 is in force, *post*.

Necessity for "seizure" in accordance with s. 116.

In *Vinter* v. *Hind*, *supra*, STEPHEN, J., expressed an opinion that the defendant cannot, in a prosecution under this section, call evidence to show that the meat which has been condemned was in fact sound. But this dictum was expressly overruled in *Waye* v. *Thompson* (1885), 15 Q. B. D. 342; 49 J. P. 693.

Defence of soundness.

(*f*) Each separate exposure of a piece of bad meat is a separate offence in respect of which a penalty and costs can be imposed (*In re Hartley* (1862), 31 L. J. M. C. 232; 26 J. P. 438). So, too, under the slightly different words of the Scotch Act

Cumulative penalties.

Note to Section 117. ten penalties were imposed in respect of ten separate portions into which a carcase had been cut (*Kenn* v. *Bell*, [1910] S. C. (J.) 13).

Penalty for hindering officer from inspecting meat, etc.

118. Any person who in any manner prevents (*a*) any medical officer of health or inspector of nuisances from entering any premises (*b*) and inspecting any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes (*a*) any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds (*c*).

(*a*) See *Small* v. *Bickley*, *ante*, p. 218, as to what does not amount to a preventing, etc. under this section. There must be some active step in the way of prevention or obstruction. See the next section as to search warrants by justices.

(*b*) See the definition in s. 4, *ante*, p. 7.

(*c*) See as to the recovery of this penalty, s. 251, *post*.

Search warrant may be granted by a justice.

119. On complaint made on oath (*a*) by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed (*b*) any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk which is intended for sale for the food of man, and is diseased unsound or unwholesome, or unfit for the food of man; and to search for seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs (*c*) any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds (*d*).

(*a*) As to "oaths," see note (*h*) to s. 102, p. 189, *ante*.

(*b*) This clause appears to apply to cases where articles are not actually exposed for sale, and it is difficult to allege that they are deposited for the purpose of sale in the terms of s. 116, *ante*, p. 218. If the officer suspects concealment he cannot enter forcibly until he obtains a warrant under this section.

No penalty is imposed in this case for the mere concealment of the article. To subject the party to a penalty there must have been an exposure for sale or some other act such as is made an offence by one of the previous sections.

Common law liability for exposing or selling unsound food.

As to the common law offence of knowingly exposing for sale in a public market unsound and unwholesome meat, see *R.* v. *Stevenson* (1862), 3 F. & F. 106, where it was held that a meat salesman might be indicted and convicted at common law for knowingly sending or exposing meat for sale in a public market as fit for human food, when in fact it was not so. See also *R.* v. *Jarvis*, *ib.* 108, and *cf. Hewett* v. *Hattersley*, p. 225, *ante*. But in *R.* v. *Crawley* (1862), 3 F. & F. 109, it was held that a person is not indictable for sending to a meat salesman meat which he knows to be unfit for human food, if he does not know and does not intend that it is to be sold as human food.

It was held in *Burnby* v. *Bollett* (1847), 16 M. & W. 644, that a private person, not being a dealer or trader, selling food, was not, in the absence of fraud or a warranty, liable to an action for damages, if the food was unwholesome. And even in the case of a dealer the law was apparently the same. Thus, it was held that the

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sale of a carcase by a meat salesman, with a latent taint of which he was ignorant, and which he had no means of knowing, did not make him liable, nor import any warranty that the meat was fit for human food (*Everton* or *Emmerton* v. *Matthews* (1862), 31 L. J. Ex. 139 ; 26 J. P. 566). But now as to implied warranties in certain cases, see the Sale of Goods Act, 1893, s. 14 (1) (2). Under this section it was held in *Frost* v. *Aylesbury Dairy Co.*, [1905] 1 K. B. 608, that there was an implied warranty by a dairy company of the wholesomeness of their milk ; and in other cases damages have been recovered under the same section for the sale of bad food or liquor ; see *Wren* v. *Holt*, [1903] 1 K. B. 610 ; 67 J. P. 191 (beer) ; *Wallis* v. *Russell*, [1902] 2 I. R. 585 (shell-fish) ; *Jackson* v. *Watson*, [1909] 2 K. B. 193 (tinned fish). In the last-mentioned case it was held that a husband could recover damages for the loss sustained in his wife's death by poisoning. See also *Crage* v. *Fry*, *Cointat* v *Myham & Son*, on p. 222, *ante*, and *Skeate* v. *Slaters, Ltd.* (1914), 110 L. T. 604.

As to the common law liability of a person selling a dangerous substance to one ignorant of the danger, see *George* v. *Skivington* (1869), L. R. 5 Ex. 1 ; and *Clarke* v. *Army and Navy Co-op. Society*, [1903] 1 K. B. 155 (sales of chemical compounds).

See further as to the sale of unwholesome meat and provisions, the Markets and Fairs Clauses Act, 1847, s. 15, in App. I., and the Acts relating to the adulteration of foods and drugs, also in App. I. See also *Shillito* v. *Thompson*, *ante*, p. 219, as to liability for selling unwholesome food contrary to a byelaw of a municipal corporation.

(*c*) As to the meaning of the word "obstructs," see *Swallow* v. *L. C. C.*, [1916] 1 K. B. 224 ; 80 J. P. 164, which was a decision under s. 27, sub-s. (2) of the Weights and Measures Act, 1889.

(*d*) See, as to the recovery of this penalty, s. 251, *post*.

INFECTIOUS DISEASES AND HOSPITALS (*a*).

Provision against Infection.

Duty of local authority to cause premises to be cleansed and disinfected (*b*),

120. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner (*c*), that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority (*d*) to give notice (*e*) in writing to the owner or occupier (*f*) of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice (*g*).

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings (*h*) for every day during which he continues to make default ; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof (*i*).

Subsequent legislation.

(*a*) The provisions of this part of the Act are extended to canal boats by the Canal Boats Acts, which are set out in App. I., *post*, Vol. II.

This part of the Act has also been greatly extended and amended by subsequent

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legislation: The Epidemic and other Diseases Prevention Act, 1883; The Public Health (Ships) Act, 1885; the Infectious Disease (Notification) Act, 1889; The Infectious Disease (Prevention) Act, 1890; The Isolation Hospitals Act, 1893; The Public Health (Ports) Act, 1896; The Infectious Disease (Notification) Extension Act, 1899; The Isolation Hospitals Act, 1901; the Public Health Act, 1904; The Public Health Acts Amendment Act, 1907; and The Public Health (Prevention and Treatment of Disease) Act, 1913. All these Acts (except the Isolation Hospitals Acts which are set out in App. I., *post*) are set out, *post*, but in the notes to the several sections of the Act of 1875 reference is made to the several alterations and amendments of the law so far as these affect each section of that Act.

Substituted and additional provisions.

(*b*) In any district where the Infectious Disease (Prevention) Act, 1890, s. 5, is in force by adoption, the provisions thereof are substituted for those of this section (s. 120). See s. 5 and notes thereto, *post*. See also ss. 56 and 66 of the P. H. A., 1907, *post*, which (when applied to any district) give further powers to an authority with respect to the cleansing, etc. of premises and articles therein.

Port sanitary authorities now act under s. 5 of the Act of 1890, and not under this section (Order of August 20th, 1912, made under the Public Health (Ports) Act, 1896, *post*).

Provision of temporary accommodation.

In any district where the Infectious Disease (Prevention) Act, 1890, s. 15, is in force by adoption, "the local authority shall from time to time provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared, who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority."

Further, in any district to which the P. H. A., 1907, s. 61, has been applied by Order of the L. G. B. or M. of H.

"(1) The local authority may exercise the powers of section fifteen of the Infectious Disease (Prevention) Act, 1890, whether that section has or has not been adopted in the district, and, where the local authority so determine, those powers may be exercised for providing temporary shelter or house accommodation with any necessary attendants for any person who, in any case to which this section applies, leaves a house after any infectious disease has appeared therein, and the local authority may borrow, subject to the provisions of the Public Health Acts, for the purpose of providing shelter or house accommodation under section fifteen of the Infectious Disease (Prevention) Act, 1890, or under this section.

"Where the local authority in pursuance of the aforesaid powers have provided a temporary shelter or house accommodation, they may, on the appearance of any infectious disease in a house, and on the certificate of the medical officer, cause any person who is not himself sick and who consents to leave the house, or whose parent or guardian (where the person is a child) consents to his leaving the house, to be removed therefrom to any such temporary shelter or house accommodation, and in the like case on the like certificate may cause any such person who does not consent to leave the house to be removed therefrom to any such temporary shelter or house accommodation, where two justices, on the application of the local authority and on being satisfied of the necessity of the removal, make an order for the removal, subject to such conditions (if any) as are imposed by the order.

"The local authority shall in every case cause the removal to be effected and the conditions of any order to be satisfied without charge to the person removed or to the parent or guardian of that person.

"(2) Any person who wilfully disobeys or obstructs the execution of an order under this section, shall be liable to a penalty not exceeding five pounds.

"(3) For the purpose of this section the word 'house' includes any tent, van, shed, or similar structure used for human habitation or any boat lying in any canal or other water within the district of the local authority and used for the like purpose."

Medical certificate.

(*c*) This means a registered medical practitioner. See note (*c*) to s. 114, *ante*, p. 216. For a form of certificate, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 402.

Duty of authority.

(*d*) This is imperative. Reference may also be made to the Vaccination Act, 1867, s. 28, with reference to the spread of small-pox, and to the Acts mentioned in note (*a*), *supra*. But a sanitary authority have no specific legal interest entitling

them to a *mandamus* directing the local guardians to enforce the Vaccination Acts (*R.* v. *Lewisham Union*, [1897] 1 Q. B. 498; 61 J. P. 151). **Note to Section 120.**

(*e*) As to authentication and service of this notice, see ss. 266, 267, *post*. It should be given by the authority itself, and not by an officer upon his own initiative. A notice given by an officer could apparently not be ratified so as to support a summons for non-compliance (*St. Leonard, Shoreditch* v. *Holmes* (1885), 50 J. P. 132, and see also *per* AVORY, J., in *Bowyer, Philpott & Payne* v. *Mather*, [1919] 1 K. B. 419; 83 J. P. 50). For a form of notice, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 403. Notice.

(*f*) The authority may select either the owner or the occupier, but the owner will often be unable to execute the direction, and this should be considered before it is decided to serve the notice on him. For definition of "owner," see s. 4, *ante*, p. 8. Person liable.

(*g*) Section 46, *ante*, p. 115, provides for the cleansing of houses in a filthy condition where, on the certificate of any two medical practitioners, it appears to the authority that the health of any person is affected or endangered, or where such cleansing would tend to prevent or check infectious disease. See also ss. 80 and 84, *ante*, pp. 156, 158, as to giving notices and taking precautions in case of infectious disease in a common lodging-house, and s. 90, *ante*, p. 161, which provides for the making of byelaws as to houses let in lodgings. Cleansing of houses.

The Infectious Disease (Notification) Act, 1889, *post*, as extended by the Infectious Disease (Notification) Extension Act, 1899, *post*, is now in force in all districts throughout the country, and affords to local authorities means of knowledge of every case of infectious disease to which that Act applies.

(*h*) See as to the recovery of this penalty, s. 251, *post*. Although the text provides for a fine of not less than 1*s*., it may be still further reduced under the S. J. A., 1879, s. 4.

(*i*) For forms of request for consent and of consent, see the Encyclopædia of Forms and Precedents, Vol. X., at p. 404. Where an authority themselves carried out the work of disinfection, and in so doing necessarily damaged some articles, and intentionally destroyed others, it was held that they were liable to compensate the owner, provided he was not "in default," and that the absence of the medical officer's certificate, and of the written notice, provided for by the section, was immaterial, where the owner assented to the authority's proceedings (*Foster* v. *East Westmoreland R. D. C.* (1903), 68 J. P. 103 (a county court case)). The latter part of this decision may, perhaps, be open to question. See a leading article in 68 J. P. N., at p. 519. Compensation for damage done.

It is very desirable that the work of disinfection should be carried out under proper supervision. It is not a duty of an inspector of nuisances, but in practice the work is usually done by him for additional remuneration. In cases in which s. 5 of the Infectious Disease (Prevention) Act, 1890, applies, it may become the duty of officers of the local authority to cleanse and disinfect a house under the superintendence of the medical officer of health.

121. Any local authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous (*a*) infectious disorder, and may give compensation for the same (*b*). Destruction of infected bedding, etc.

A form of order giving such a direction will be found in the Encyclopædia of Forms and Precedents, Vol. X., at p. 405.

As regards ships, see the Public Health (Ships) Act, 1885, *post*. Additional provisions.

Under the Infectious Disease (Prevention) Act, 1890, s. 6, *post* (if in force by adoption), an authority may require the owner of bedding, etc., which has been exposed to infection, to hand the same over to an officer for disinfection, and the bedding, etc. is then to be disinfected and returned, compensation being made for any unnecessary damage done.

The present section does not authorise an authority to make any charge for the work of destroying infected articles when they act on their own initiative; but

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where an authority performed such work at the owner's request, the L. G. B. expressed the view that the authority would probably be held to be entitled to recover any reasonable expenses incurred by them.

(*a*) This word restricts the application of the section to the class of infectious disorders which endangers life. There is a definition of "dangerous infectious disease" in the Infectious Disease (Notification) Act, 1889, s. 6, *post*. See as to common lodging-houses, ss. 80, 84, *ante*, pp. 156, 158, and as to houses let in lodgings, s. 90, *ante*, p. 161.

Unauthorised acts of officers.

A medical officer of health has no power, *virtute officii*, to order the destruction of infected clothing, at any rate not except in cases of great urgency (*Garlick* v. *Knottingley U. D. C.* (1904), 68 J. P. 494; 2 L. G. R. 1345). It was suggested in the last-mentioned case that, under exceptional circumstances calling for prompt action, the medical officer might be justified in acting upon his own initiative, and one of the learned judges expressed the opinion that in any case an authority might adopt and ratify his act so as to render it for all purposes their own.

The medical officer of health of an Irish district (in which neither the Infectious Disease (Notification) Act, 1889, nor the Infectious Disease (Prevention) Act, 1890, had been adopted), acting upon a medical certificate that a dangerous infectious disease existed in a house, ordered the immediate destruction of all property in the house without any previous communication to, or subsequent ratification by, the sanitary authority. It was held, (1) that the authority were not liable to the owner in trespass, for the medical officer had not acted within the scope of his authority; and (2) that had he been authorised under ss. 137 and 138 of the P. H. (Ireland) A., 1878, the remedy would have been an arbitration under s. 274 of the Act (*Farrell* v. *Longford U. D. C.* (1909), 43 Ir. L. T. 183).

Compensation.

(*b*) See s. 308, *post*, but observe that compensation under that section is limited to cases where the person who suffers damage is not himself in default. It will be observed that the word "may" is used, but it would probably be construed as imposing a duty, and not merely as conferring an option (*Julius* v. *Bishop of Oxford* (1880), 5 App. Cas. 214; 44 J. P. 600; *Gray* v. *St. Andrew's and Cupar Committees*, [1911] S. C. 266; *Garlick* v. *Knottingley U. D. C.*, *supra*; and see also *Foster* v. *East Westmoreland R. D. C.*, p. 229, *ante*). The expenses incurred under these sections in urban districts are payable out of the general district fund (s. 207, *post*); in rural districts they constitute general expenses (s. 229, *post*).

Provision of means of disinfection.

122. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

See the preceding section and the Infectious Disease (Prevention) Act, 1890, s. 6, as to the disinfection of bedding, clothing, or other articles which have been exposed to infection.

The section is distinctly permissive, not obligatory, and if a local authority do not avail themselves of their powers, s. 7 of the Housing of the Working Classes Act, 1885, does not (in the opinion of the M. of H.) enable a statutory complaint to be brought under s. 299 of the Act of 1875.

It is the usual practice of the M. of H. to require that any building which is intended to contain infected persons or things should be situated at a distance of not less than forty feet from the boundary of the site. A relaxation of the rule is, however, permitted if the circumstances are exceptional, as in the case of some large towns where a sufficiently large site is difficult to obtain. In the case of the provision of ambulance sheds the Ministry sometimes approve a site with a smaller zone than forty feet if the local authority are willing to give them an undertaking that the ambulance shall always be disinfected after use before being placed in the shed.

A local authority proposed to provide in connection with a disinfecting station baths for the use of persons who had been in contact with infectious disease while their clothes were being disinfected. The L. G. B. held, however, that there was no statutory authority for expenditure of this kind.

Two or more local authorities may combine under s. 285 of this Act or under s. 57 of the L. G. A., 1894, for the provision of a joint disinfecting station and plant. A local authority cannot, however, in the opinion of the M. of H., combine with a board of guardians for the purpose. The former should provide the apparatus and then agree with the guardians for the reception of articles for disinfection.

If an authority propose to provide a disinfecting apparatus outside their district, they should obtain the consent of the neighbouring authority under s. 285.

Note to Section 122.

123. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Provision of conveyance for infected persons.

See also ss. 121 and 122 and notes thereto. And as to ambulances in connection with isolation hospitals, see the Isolation Hospitals Act, 1893, s. 13, in App. I., *post*, Vol. II. It will be noted that s. 123 does not enable an authority to provide an ambulance for accident cases; but this power is now obtainable under the P. H. A., 1907, s. 50. As to ambulances for accidents and non-infectious cases in London, see the Metropolitan Ambulances Act, 1909.

An authority outside London has apparently no power to provide a conveyance for taking persons home upon discharge from an infectious diseases hospital.

As to the power of the Metropolitan Asylums Board to provide ambulances in the metropolis, see the P. H. (London) A., 1891, s. 79. Carriages provided by the asylum managers may be used for conveying patients to and from hospitals other than those provided by such managers.

The M. of H. consider that a local authority have no power to contribute to the funds of an ambulance brigade. See, however, the notes to s. 50 of the Act of 1907 as to an arrangement which may be equivalent to a "provision."

No carriage duty is payable in respect of a motor ambulance. See Finance Act, 1920, 10 & 11 Geo. 5, c. 18, s. 13 (4).

124. Where any suitable hospital or place (*a*) for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous (*b*) infectious disorder, and is without proper lodging or accommodation (*c*), or lodged in a room occupied by more than one family (*d*), or is on board any ship or vessel (*e*), may, on a certificate signed by a legally qualified medical practitioner (*f*), and with the consent of the superintending body of such hospital or place (*g*), be removed, by order of any justice (*h*), to such hospital or place at the cost of the local authority; and any person so suffering, who is lodged in any common lodging-house (*i*), may, with the like consent and on a like certificate, be so removed by order of the local authority.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority (*k*) making the same may think expedient; and any person who wilfully disobeys or obstructs (*l*) the execution of such order shall be liable to a penalty not exceeding ten pounds (*m*).

Removal of infected persons without proper lodging to hospital by order of justice.

For forms of medical certificate and of order by an authority for use under this section, see Encyclopædia of Forms and Precedents, Vol. X., pp. 330, 331.

As regards ships, see the Public Health (Ships) Act, 1885, *post*. See also Infectious Disease (Prevention) Act, 1890, s. 8, which prohibits in certain cases the retaining of the body of a person who has died of infectious disease; s. 9, which prohibits the removal from a hospital of such a body except for burial; s. 10, which

Note to Section 124.

enables a justice to make an order for the removal of a dead body; and s. 12, which enables a justice to order the detention in a hospital of a person suffering from infectious disease who has no proper lodging.

(*a*) This word is very general, and has been construed to apply to the infirmary or sick wards of a workhouse. 29 & 30 Vict. c. 90, s. 27, required the place to be within the district; this restriction is removed, and it may be without the district if within a convenient distance. It will be for the justices to decide whether the place is suitable when making the order.

(*b*) There are several infectious diseases which are not of themselves dangerous and do not require this special interposition. See note (*a*) to s. 121, *ante*, p. 230.

"Without proper lodging."

(*c*) The fact that a scarlet fever patient is lodged in the parlour of a four-roomed house, the other three rooms being occupied by the rest of the family, is in itself sufficient evidence that he is without proper lodging or accommodation to justify an order under this section, for although it provides primarily for the protection of the patient, it is also directed to the protection of other persons (*Warwick* v. *Graham*, [1899] 2 Q. B. 191; 63 J. P. 599).

In districts to which the P. H. A., 1907, s. 65, *post*, has been applied, s. 124, *supra*, will extend to all cases of persons suffering from any dangerous infectious disease, and being in or upon any house or premises where such persons cannot be effectually isolated so as to prevent the spread of the disease. See also s. 67 of the same Act as to providing nurses.

(*d*) As to the ambiguity of this word, see note (*a*) to s. 77, *ante*, p. 154.

(*e*) See as to persons suffering from infectious disease in canal boats, the provisions of the Canal Boats Acts in App. I., *post*, Vol. II.

Medical certificate.

(*f*) *I.e.*, one registered under 21 & 22 Vict. c. 90, s. 34, and 49 & 50 Vict. c. 48, s. 27. As to the certificate, see 21 & 22 Vict. c. 90, s. 37. For a form of certificate, see Encyclopædia of Forms and Precedents, Vol. X., at p. 405; for a form of order upon which the order of removal might be framed, see *ibid.*, p. 310.

(*g*) It is presumed that a general consent will suffice, otherwise the removal would be in many cases impracticable.

Illegal or negligent removal

(*h*) A child suffering from scarlet fever was removed to a hospital by an officer of the local authority without the consent of the father, and without any magisterial order having been obtained under the corresponding s. 42 of the P. H. (Scotland) A., 1867. The child died shortly after its admission and the father sued the authority for damages, alleging that its death had been caused by the negligent manner of its removal:—*Held*, that as the removal had not been effected under s. 42, *supra*, the defendants were not protected by s. 118 (corresponding to s. 265 of this Act) (*Mitchell* v. *Aberdeen* (*Magistrates of*) (1893), 20 Ct. of Sess. Cas. (4th ser.) 253). In another case precisely similar, except that the father's consent to the removal had been obtained, the same conclusion was arrived at (*Sutherland* v. *Aberdeen* (*Magistrates of*) (1894), 22 Ct. of Sess. Cas. (4th ser.) 95; 32 Sc. L. R. 81).

(*i*) See s. 84, *ante*, p. 158. The provision referring to common lodging-houses was new.

(*k*) These words are to be read *reddendo singula singulis*. The justice is to determine when he makes the order, and the local authority when they make it.

The patient has no option as to his removal, if an order be made.

(*l*) As to the meaning of the word "obstructs," see *Swallow* v. *L. C. C.*, [1916] 1 K. B. 224; 80 J. P. 164.

Conclusiveness of order.

(*m*) In *Booker* v. *Taylor* (1882), Times, Nov. 21st, an order was made for the removal of a child under this section. The mother resisted the removal, and was summoned for so doing. At the hearing the magistrates, considering the order to be invalid, declined to convict. It was held that they had no right to go behind the order and examine into its validity; and that they were bound to convict if there had been obstruction. This decision was followed in *R.* v. *Davey*, *Ex parte Bishop*, [1899] 2 Q. B. 301; 63 J. P. 515).

Removal to hospital

125. Any local authority may make regulations (*a*) (to be approved of by the Local Government Board) for removing to any hospital to

which such authority are entitled to remove patients (*b*), and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder; and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence (*c*). Section 125. of infected persons brought by ships.

As regards ships, see the Public Health (Ships) Act, 1885, *post*.

(*a*) The M. of H. have model regulations; in these the expression "dangerous infectious disorder" is defined as meaning any one of the following diseases: Small-pox, diphtheria, membranous croup, scarlatina or scarlet fever, typhus fever, typhoid or enteric fever, relapsing fever, and continued fever. As to publication of regulations see s. 188, *post*.

(*b*) That is, under the last section or s. 131, *post*, p. 238.

(*c*) See as to the recovery of penalties, s. 251, *post*.

126. Any person (*a*) who— Penalty on exposure of infected persons and things.

(1) While suffering from any dangerous (*b*) infectious disorder wilfully exposes himself without proper precautions (*c*) against spreading the said disorder in any street public place shop inn (*d*) or public conveyance (*e*), or enters any public conveyance without previously notifying to the owner conductor or driver thereof that he is so suffering; or

(2) Being in charge of any person (*f*) so suffering, so (*c*) exposes such sufferer (*g*); or

(3) Gives lends sells transmits or exposes, without previous disinfection, any bedding clothing rags or other things which have been exposed to infection from any such disorder (*h*),

shall be liable to a penalty not exceeding five pounds (*i*); and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to the disinfection of the conveyance (*k*).

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding clothing rags or other things for the purpose of having the same disinfected (*l*).

As regards ships, see the Public Health (Ships) Act, 1885, *post*.

(*a*) It has been held an indictable offence to expose unnecessarily in public streets persons infected with smallpox, whether produced by inoculation or otherwise (*R.* v. *Vantandillo* (1815), 4 M. & S. 73; *R.* v. *Burnett* (1815), 4 M. & S. 272). These were cases of exposing children; the text applies not only to such cases but to adults exposing themselves. Common law liability.

In *Best* v. *Stapp* or *Staff* (1872), 2 C. P. D. 191 n., a person took a child to a lodging-house without disclosing that it was recovering from smallpox. Two children of the lodging-house keeper caught the disease and died; and their father succeeded in an action for damages. Whether, if there had been no knowledge on the part of the lodger, the action could have been maintained, *quære*. And see also *Gwynne* v. *Clark* (1913), 77 J. P. N. 172, where this decision was followed in a case of pulmonary consumption.

Note to Section 126.

In *Humphreys* v. *Miller* (1916), 32 T. L. R. 524, an action was brought by a lodging-house keeper against the executors of one, deceased, who was a leper, and who had occupied rooms in the plaintiff's house. It was claimed that there was an implied warranty on the part of the deceased for a breach of which the defendants were liable. It was held that on taking furnished lodgings there was no implied warranty by the lessee that the tenant was a fit and proper person to occupy them.

As to the liability of a hospital authority who discharge a patient before he is free from infection, see note (*b*) to s. 131, *post*, p. 239.

(*b*) See s. 124, note (*b*), *ante*, p. 232.

"Proper precautions."

(*c*) A medical man in practice at T. sent a scarlet fever patient to the fever hospital there with a certificate, directing him to walk in the middle of the road and not to talk to any one, but in consequence of an alleged informality in the certificate, the patient was refused admission. Thereupon the medical man walked with him through the streets to the residence of the chairman of the local board, from whom, after some delay, he obtained an order for the man's admission. He then returned with the patient to the police station to procure the ambulance. On an information against the medical man under this sub-section, the justices were of opinion that it was not proved that he "had charge of" the patient, that he had not wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever, and they refused to convict. It was held that they were right (*Tunbridge Wells Local Board* v. *Bisshopp* (1877), 2 C. P. D. 187). In *Malloch* v. *Hunter* (1894), 21 Ct. of Sess. Cas. (4th ser.), J. C. 22, a medical practitioner was charged under the corresponding section (s. 149) of the Public Health (Scotland) Act, 1867, for that he, being the person in charge of A. B., a person suffering from enteric fever, being an infectious disorder, did wilfully expose him while so suffering by placing him in a cab and conveying him from his lodgings to a hospital without taking proper precautions against spreading the disorder. The cab being a public conveyance was furnished with leather fittings, but there was no evidence as to what other precautions were necessary. The magistrate convicted the accused:—*Held*, on appeal (1) that no offence was committed unless the patient was conveyed without proper precautions; (2) that the onus lay on the prosecutor to prove what precautions were necessary, and that they had not been used; (3) that as the prosecutor had failed to discharge this onus the conviction must be quashed.

(*d*) As to what is an inn, see s. 128, note (*c*), *post*, p. 236.

"Public conveyance."

(*e*) A public conveyance appears to be one which plies openly and publicly for passengers. A fly which is hired from an innkeeper or jobmaster may possibly not be within the provisions of the section. See also as to public conveyances, s. 127, *post*, p. 235, and notes thereto.

"Person."

(*f*) This person may be an adult, it seems, as well as a child. But probably (see note (*h*), *infra*) it would not include a dead person. See, however, the Infectious Disease (Prevention) Act, 1890, s. 11, in notes to next section.

(*g*) In districts to which the P. H. A., 1907, s. 62, *post*, has been applied, this paragraph is to be read as if the words "or causes or permits such sufferer to be so exposed" were added after the word "sufferer."

(*h*) During epidemics of cholera in Egypt, France, and the Black Sea ports, the L. G. B. issued regulations under s. 130 for the disinfection of rags from those countries. And see 59 & 60 Vict. c. 19, and 4 Edw. 7, c. 16, *post*.

Conveyances and disinfection.

It is presumed that this sub-section would cover the case of a fly hired for the conveyance of an infected person and subsequently let for hire without previous disinfection. From an answer given in Parliament by the President of the L. G. B., on February 23rd, 1886, it would appear to be the opinion of the department that the provisions of this section do not extend to the removal in a public conveyance of the dead body of a person who has died of an infectious disorder. Such a case is not provided for by the Act, but see the notes to s. 127, p. 235, *post*.

(*i*) As to the recovery of this penalty, see s. 251, *post*.

(*k*) See the next section and the P. H. A., 1907, ss. 63, 64, set out thereunder. It will be observed that s. 126, *supra*, applies only to a "public" conveyance, as to which see note (*e*), *supra*. If a non-public conveyance was used without notification by a person suffering from infectious disease, the owner could probably recover

as damages the expenses of its disinfection, on the principle of the decision in *Best* v. *Stapp* or *Staff*, *ante*, p. 233. **Note to Section 126.**

(*l*) See s. 122, *ante*, p. 230, and the provisions of 53 & 54 Vict. c. 34, *post*.

127. Every owner or driver of a public conveyance (*a*) shall immediately provide for the disinfection of such conveyance after it has to his knowledge (*b*) conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding five pounds (*c*); but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section (*d*). Penalty on failing to provide for disinfection of public conveyance.

In a district where the Infectious Disease (Prevention) Act, 1890, s. 11, *post*, is in force by adoption, "any person who hires or uses a public conveyance other than a hearse for the conveyance of the body of a person who has died from any infectious disease, without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance, other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act." Additional statutory provisions.

In districts to which they have been applied, ss. 63 and 64 of the P. H. A., 1907, provide as follows:

Section 63. "The owner or driver of a public vehicle within the district of the local authority used for the carrying of passengers at separate fares shall not knowingly convey or any other person shall not knowingly place in any such public vehicle a person suffering from any infectious disease, or a person suffering from any such disease shall not enter any such vehicle, and every person who shall offend against this section shall for every such offence be liable to a penalty not exceeding forty shillings."

Section 64. "(1) If any person suffering from any infectious disease is conveyed in any public vehicle within the district of the local authority the owner or driver thereof as soon as it comes to his knowledge shall give notice to the medical officer, and shall cause such vehicle to be disinfected, and, if he fails so to do, he shall be liable to a penalty not exceeding five pounds, and the owner or driver of such vehicle shall be entitled to recover in a summary manner from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient sum to cover any loss and expense incurred by him in connection with such disinfection.

"(2) It shall be the duty of the local authority when so requested by the owner or driver of such public vehicle to provide for the disinfection of the same free of charge, except in cases where the owner or driver conveyed a person knowing that he was suffering from infectious disease."

(*a*) See s. 126, notes (*e*), (*h*), and (*k*).

(*b*) That is, whether he was aware of the person being infected at the time of conveyance, or only discovered it afterwards. See also ss. 63, 64 of the Act of 1907, *supra*.

As to the obligation of the owner or driver of a public conveyance to disinfect such conveyance after it has been used for carrying the dead body of a person who has died of infectious disease, see 53 & 54 Vict. c. 34, s. 11, *supra*.

(*c*) See as to the recovery of this penalty, s. 251, *post*.

(*d*) This will be an answer to any proceeding for disobedience of a hackney carriage byelaw, or to proceedings under 10 & 11 Vict. c. 89, s. 52.

128. Any person who knowingly lets for hire any house room or part of a house in which any person has been suffering from any dangerous Penalty on letting houses

Section 128. in which infected persons have been lodging.

infectious disorder, without having such house room or part of a house and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner (*a*), as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds (*b*).

For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn (*c*).

As regards ships, see the Public Health (Ships) Act, 1885, *post*.

(*a*) *I.e.*, one duly registered under 21 & 22 Vict. c. 90, s. 34, and 49 & 50 Vict. c. 48, s. 27. As to the certificate, see 21 & 22 Vict. c. 90, s. 37. For a form of certificate, see Encyclopædia of Forms and Precedents, Vol. X., at p. 412.

(*b*) See as to the recovery of this penalty, s. 251, *post*. Admitting persons to night shelters at a charge of one penny per head per night, is not a letting to hire of the house or part of a house used for that purpose (*Colclough* v. *Edwards* (1893), 57 J. P. 772).

(*c*) An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with lodgings, and whatsoever they reasonably desire for themselves and their horses while on their way (Burn's Justice, Vol. I., p. 64; *R.* v. *Luellin* (1700), 12 Mod. 445; *Thompson* v. *Lacy* (1820), 3 Barn. & Ald. 283; *R.* v. *Rymer* (1877), 2 Q. B. D. 136; 41 J. P. 199). As to the extent of the obligation of an innkeeper to lodge travellers, see *Browne* v. *Brandt*, [1902] 1 K. B. 696.

Where the Infectious Disease (Prevention) Act, 1890, s. 7, *post*, is in force by adoption, a lessor will generally have means of knowing whether infectious disease has existed on the premises or not, for that section imposes a penalty upon persons who cease to occupy any house, room, or part of a house in which any person has within the preceding six weeks been suffering from an infectious disease, unless the house, etc., has first been disinfected, or unless notice of the existence of the disease has been given to the owner of the house, etc. It also imposes a penalty on persons making false answers to questions on the point: see s. 129, and notes thereto.

See also the Housing of the Working Classes Act, 1890, s. 75, and the Housing, Town Planning, etc. Act, 1909, ss. 14, 15 (1), *post*, Vol. II., and notes thereto, as to implied conditions upon the letting of furnished houses and of unfurnished houses below certain values.

Penalty on persons letting houses making false statements as to infectious disease.

129. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous (*a*) infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month (*b*).

(*a*) See s. 124, note (*b*), *ante*, p. 232.

(*b*) As to the prosecution for this offence, see s. 251, *post*.

As to implied conditions in the letting of houses, see note (*c*) to last section.

In a district where the Infectious Disease (Prevention) Act, 1890, s. 7, *post*, is in force by adoption, any person ceasing to occupy any house, room, or part of a house, who on being questioned by the owner thereof, or by any person negotiating for the hire of such house, etc., as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, is liable to a penalty not exceeding £10.

130. (*a*) The Local Government Board may from time to time make alter and revoke such regulations (*b*) as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic endemic or infectious disease (*c*), and preventing the spread of cholera and such other diseases, as well on the seas rivers and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof (*d*), as on land ; and may declare by what authority or authorities such regulations shall be enforced and executed (*e*). Regulations so made shall be published in the London Gazette, and such publication shall be for all purposes conclusive evidence of such regulations (*f*).

Section 130. Power of M. of H. to make regulations.

Any person wilfully neglecting or refusing to obey or carry out or obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding fifty pounds (*g*).

(*a*) By the P. H. A., 1904, s. 1 (1), the power to make regulations under s. 130, *supra*, or s. 134, *post*, p. 246, includes "the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from vessels arriving at any port, and for the prevention of the conveyance of infection by means of any vessel sailing from any port, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any foreign country, and the regulations may in particular provide for the recovery of any expenses incurred in disinfection and of any charges authorised to be made by the regulations for the purpose of those regulations or any services performed thereunder, and also for any powers and duties under the regulations being executed and performed by local authorities: Provided that the regulations shall not be made except after consultation with the Board of Trade." See this section, *post*.

Extension by later Acts of power to make regulations.

By the Public Health (Regulations as to Food) Act, 1907, s. 1 (1), the power of making regulations under s. 130, *supra*, or s. 134, *post*, p. 246, includes "the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

"(a) provide for the examination and taking of samples of any such articles:

"(b) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations:

"(c) provide for the recovery of any charges authorised to be made by the regulations for the purpose of the regulations or any services performed thereunder." See this section, *post*.

As to the metropolis, see note to s. 134, *post*, p. 246.

As to the exercise of power to make and enforce regulations made under the National Insurance Acts, see *O'Neill* v. *Middlesex Insurance Committee*, [1916] 1 K. B. 331 ; 80 J. P. 204.

(*b*) Under this section, or s. 134, *post*, p. 246, as extended by the enactments mentioned in the preceding note and note (*e*), *infra*, the Board have made Regulations, the text of which will be found in App. II., *post*, Vol. II.

Existing regulations

(*c*) As to what diseases are epidemic or endemic, see s. 134, note (*a*), *post*, p. 247.

(*d*) The Quarantine Act, 1825, provided for the performance of quarantine by vessels coming from a place from which "the plague or other infectious disease or distemper highly dangerous to the health of his Majesty's subjects" might be brought, and also for the observance of special precautions in the case of vessels arriving from America or the West Indies during the prevalence of yellow fever or other highly infectious distemper. In practice this provision had in recent years been regarded as applicable only to plague and yellow fever. The P. H. A., 1896,

Former Quarantine Acts.

Note to Section 130.

post, repealed the Act of 1825 and various other enactments relating to quarantine, and the necessary precautions against the introduction of plague and yellow fever, are now taken by port and other riparian sanitary authorities, in the same way as against the introduction of cholera, in accordance with regulations made by the L. G. B. under, so far as England and Wales outside London are concerned, this section and s. 134, *post*, p. 246.

Enforcement of regulations.

(*e*) By the P. H. A., 1896, s. 1, *post*, regulations made in pursuance of s. 130, *supra*, or s. 134, *post*, p. 246, may provide for their being enforced and executed by the officers of customs, and the officers and men of the coastguard; for the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board; and for the questions to be answered by masters, pilots, and other persons, on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel, the detention of vessels and persons on board, and the duties to be performed by masters, pilots, and others, on board. The regulations are subject to the consent of the Commissioners of Customs so far as they apply to officers of customs, to the consent of the Admiralty so far as they apply to officers and men of the coastguard, and of the Board of Trade so far as they apply to signals.

For such Regulations, see App. II., *post*, Vol. II.

By the Public Health (Prevention and Treatment of Disease) Act, 1913 (*post*), it is made clear that county councils may be entrusted with the enforcement of these Regulations, and by the same Act county councils and sanitary authorities may, with the sanction of the L. G. B., make arrangements for the treatment of tuberculosis.

Proof of regulations.

(*f*) See s. 135, *post*, p. 247, and the note thereon. *Quære*, whether until publication in the Gazette, the regulations will have the force of law.

Penalty for disobedience or obstruction.

(*g*) The provision imposing penalties was repealed by the P. H. A., 1896, *post*. By s. 1 (3) of that Act if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made either under this section or s. 134, *post*, p. 246, he is liable to a penalty not exceeding £100, and in the case of a continuing offence to a further penalty not exceeding £50 for every day during which the offence continues. Any such penalty, if not recovered under the provisions of the Acts relating to public health, is recoverable by action on behalf of the Crown in the High Court.

Hospitals.

Power of local authority to provide hospitals.

131. Any local authority may (*a*) provide for the use of the inhabitants (*b*) of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception (*c*); or

Contract for the use of any such hospital or part of a hospital or place of reception (*d*); or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on (*e*).

Two or more local authorities may combine in providing a common hospital (*f*).

As regards ships, see the Public Health (Ships) Act, 1885, *post*.

(*a*) This word is permissive; the section does not create a duty.

Hospitals outside district.

Under this section an authority may establish a hospital in another district without the consent of the authority of that district (*Withington L. B.* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 19; 57 J. P. 340). Compare *Edinburgh Magistrates* v. *Leith Magistrates* (1896), 23 Ct. of Sess. Cas. (4th ser.) 383.

By the Poor Law Act, 1879, s. 14, if it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts

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relating to the relief of the poor should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by order of the L. G. B. (now M. of H.), transfer such hospital or building accordingly, and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution and order. If the hospital is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district, the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building. Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept, and the application of the sum so paid. These provisions are, however, scarcely applicable now that boards of guardians and rural sanitary authorities (rural district councils) are separate bodies, and the M. of H. issue sale orders instead of transfer orders. It is contrary to the practice of the Ministry to sanction such transactions until a rural district council agrees to carry out such alterations of the buildings as the Ministry considers to be necessary.

Hospitals in metropolis.

For the powers of the district asylums boards in the metropolis to provide hospitals, see 30 & 31 Vict. c. 6; 31 & 32 Vict. c. 122, s. 35; 32 & 33 Vict. c. 63; 33 & 34 Vict. c. 18, ss. 1, 2; 34 & 35 Vict. c. 108, s. 10; 39 & 40 Vict. c. 61, ss. 40—42; 42 & 43 Vict. c. 6; 42 & 43 Vict. c. 54, s. 13; 54 & 55 Vict. c. 76, ss. 75—81.

Isolation hospitals.

As to the powers of local authorities to petition county councils for the establishment of isolation hospitals, see the Isolation Hospitals Acts, 1893 and 1901, in App. I., *post*, Vol. II.

Duties of authority and guardians respectively.

(*b*) The Act makes no distinction between pauper and non-pauper cases. If, therefore, a district council, in the discharge of their duty of taking precautions against the spread of infectious disease, provide an infectious diseases hospital, this hospital should provide accommodation for the isolation of persons of all classes so infected. See *R.* v. *Rawtenstall* (*Mayor, etc. of*), cited in the notes to s. 132, *post*, p. 245; but *cf. Farquhar* v. *Isle of Thanet Hospital Board*, *post*, p. 245. The L. G. B. expressed the following views with regard to the treatment of sick paupers: Where a person suffering from illness, including infectious disease, is destitute, it is the duty of the guardians, or, in the interval between their meetings, of the relieving officer, to give such relief as the case may require, and, if necessary, to arrange for the admission of the patient to a hospital. Where, however, such removal of the patient is only required for purposes of isolation, and the person to be removed is not destitute, the guardians have no duty, and the necessary provision should be made by the sanitary authority. The test of the guardians' duty in the matter is the destitution of the patient, and this will not necessarily depend upon his being in the actual receipt of relief, but may consist in his being unable to obtain at his own cost the requisite medical attendance, nursing, and accommodation. Where it devolves upon the guardians to deal with cases of infectious disease they are not restricted to providing for the treatment of such cases in the workhouse. On the contrary, the Board consider it very desirable, where the sanitary authority possess a suitable isolation hospital, that the guardians should arrange with them for the reception and maintenance therein, at the cost of the union, of persons sent there by order of the guardians and their officers, and of persons in respect of whom relief is granted by the guardians, on application, after their admission into the hospital. The agreement may include cases occurring among the inmates of the workhouse.

Workhouse hospitals, on the other hand, are intended exclusively for destitute persons, and guardians are not empowered to admit non-pauper cases, nor to relieve the sanitary authority from the duty of providing accommodation for such cases.

Authority's duty towards patients in hospitals and attendants.

A boy who was treated for scarlet fever in the hospital of a municipal corporation was discharged while still in an infectious state, and communicated the disease to his brothers. In accordance with the rules of the hospital, the boy was discharged by the matron, under the instructions of the visiting physician, a competent medical man. In an action for damages by the father, the jury found that there was a want

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of due skill and care in the discharge of the boy, and that there was an undertaking by the corporation to the father that their visiting physician should act with reasonable skill and care in treating the boy:—*Held*, that there was no evidence upon which the jury could find that such an undertaking existed, and that the obligation undertaken by a local authority carrying on a hospital is only that they will use reasonable skill and care in selecting the staff (*Evans* v. *Corporation of Liverpool*, [1906] 1 K. B. 160; 69 J. P. 263). In an earlier county court action damages had been recovered in a similar case (*Keegan* v. *Birmingham Corporation* (1896), Times, March 14th). So, too, the Governors of St. Bartholomew's Hospital were held not to be responsible to a non-paying patient for injuries received by him through the "displacement of a hot-water can" during an operation. Hospital surgeons and the nurses, at any rate when acting under the orders of such surgeons in the operating room, are not servants of the governors so as to render the latter liable in case of any negligence. The duty of the governors is to exercise reasonable care in selecting a competent professional staff and in furnishing such staff with proper apparatus and appliances (*Hillyer* v. *St. Bartholomew's Hospital Governors* (or *London Corporation*), [1909] 2 K. B 820; 73 J. P. 501; followed in *Foote* v. *Shaw Stewart*, [1912] S. C. 69. See also *Davis* v. *London C. C.* (1914), 30 T. L. R. 275).

A porter at an infectious diseases hospital contracted scarlet fever, and claimed compensation under the Workmen's Compensation Act, 1906. There was no satisfactory evidence as to the time, place, and circumstances at or under which he caught the disease, but he probably did so in the course of his duties:—*Held*, that the contracting of the disease could not under the circumstances be called an "accident" (*Martin* v. *Manchester Corporation*, [1912] W. N. 105; 76 J. P. 250).

M. of H. practice when loan desired.

(*c*) If a local authority desire to obtain a loan to defray the cost of providing a hospital, the sanction of the M. of H. must be obtained (ss. 233, 234). Any provisional agreement entered into by the authority for the purchase of land as a site for the hospital should therefore be made conditional upon such sanction being given. Any application to the Ministry for sanction to a loan should be accompanied by (1) a copy of the authority's resolution; (2) detailed estimates; (3) a map showing the boundaries of the sanitary district, the parish and sanitary district in which the site is comprised, the position of the site and the means of access to it from various points; (4) a further map on a large scale (say that of twenty-five inches to the mile), showing the area and shape of the proposed site and its relation to houses and lands in its immediate vicinity; (5) plans of the proposed hospital buildings in cases where the application includes the cost of such buildings; (6) a statement showing the number of persons residing within a quarter of a mile and half a mile, respectively, from the site; (7) information as to the available water supply and the proposed means for disposing of the sewage of the hospital; and (8) particulars (in forms which are obtainable) respecting the assessable value and the existing debt for sanitary purposes of the district.

The plans of the hospital buildings should be submitted to the Ministry at an early stage of their preparation. If they are not found to be satisfactory the Department is usually willing to arrange for a conference on the subject at their office between representatives of the local authority (accompanied by their architect and medical officer of health) and representatives of the Ministry's medical and architectural departments. Before sanctioning a loan the Ministry usually cause a public local inquiry into the matter to be held in the district by one of their inspectors, at which any person interested may attend and give evidence. Due public notice of any such inquiry is given in the locality concerned.

M. of H. memoranda as to site, construction, etc.

The Ministry issue memoranda for the guidance of local authorities in the selection of a suitable site for a hospital for infectious diseases and the erection of the buildings, and it may be useful to mention the points which the Ministry regard as absolutely indispensable.

The site, or so much of it as is to form the grounds of the hospital, should be enclosed by a wall or close fence at least six feet six inches in height, and every building which is to contain infected persons or things should be at least forty feet distant from the boundary.

The buildings should be preferably of brick or stone, as it is not the practice of the Ministry in ordinary cases to sanction loans for iron hospitals or hospital buildings of a temporary character. Apart from other considerations, buildings constructed

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of wood or corrugated iron are, as the Ministry are advised, ill suited for permanent use as hospitals, for the reason that it is difficult to maintain them at a proper temperature during extremes of hot and cold weather.

In the ward blocks each bed must have at least 12 linear feet of wall space, 144 square feet of floor space, and 2,000 cubic feet of air space.

In the case of smallpox hospitals the site must not have within a quarter of a mile of it either a hospital, whether for infectious diseases or not, or a workhouse, asylum, or any similar establishment, or a population of as many as 200 persons. It must not have within half a mile of it a population of as many as 600 persons, whether in one or more institutions, or in dwelling-houses; and even where the above conditions are fulfilled, a hospital must not be used at one and the same time for the reception of cases of smallpox and of any other class of disease.

Reception of accident cases.

The L. G. B. were advised that district councils are legally empowered to provide for the use of the inhabitants of their district a hospital for the treatment of cases of accident causing sickness, and they considered that the words "accident causing sickness" might be taken to include accidental injury sufficiently serious to make detention of the patient in a hospital desirable. The Board, when expressing this opinion, referred to the judgment of CHITTY, J., in *Withington L. B.* v. *Corporation of Manchester, ante*, p. 238, where his lordship observed that the provisions of s. 131 are not severable, and that the hospital to be provided is for the sick, without any distinction as to the nature of the sickness, whether it be infectious or not.

Lying-in hospitals.

The M. of H. do not consider that pregnant women incapacitated by reason of their pregnancy are "sick inhabitants" within the meaning of the section so as to enable local authorities to provide lying-in hospitals.

Charge for admission to infectious diseases hospital.

Upon the question of making a charge for admission to an infectious diseases hospital, the L. G. B. expressed themselves as follows: While the means of isolation afforded by the hospital is of considerable benefit to the individuals, such means should be regarded as directed to the attainment of the larger benefit of the protection of the general public health, and therefore it is, in the Board's opinion, undesirable that admission should be subject to any charges and conditions which, by operating restrictively, may tend to prevent the use of the hospital by the poorer portion of the community, that is to say, by those who have the least facilities for isolation and treatment at their own homes.

Rules as to discipline, etc.

The M. of H. consider that rules may with advantage be drawn up by a district council for the purpose of maintaining proper discipline in a hospital provided by them, of preventing any extension of disease by hospital agencies, and for giving notice to the relatives of patients of the restrictions placed on visitors. They also state that in framing such rules it is desirable that the council should be guided by the medical practitioner administering the affairs of the hospital, but that the Ministry would generally be willing to assist in the matter if a draft of the rules were submitted to them.

Hospitals causing, or likely to cause, a nuisance.

It has already been observed that an authority are merely enabled, and not required, to provide hospitals under this section. The statute will not, therefore, be any defence to an action against them, nor will it prevent an injunction from issuing, if they erect a hospital for infectious diseases so as to be a nuisance to any person. This was so held with reference to similar permissive provisions in the Metropolitan Poor Act, 1867, in *Managers of the Metropolitan Asylums District* v. *Hill* (1881), 6 App. Cas. 193; 45 J. P. 664. The principle of that case was approved in *Canadian Pacific Rail. Co.* v. *Parke*, [1899] A. C. 535; see also *Hanley* v. *Edinburgh*, [1913] A. C. 488. Where an authority treated smallpox cases in a stable close to the plaintiff's house, and his daughter caught the disease, there was a verdict and judgment for him (*Chapman* v. *Gillingham U. D. C.*, Times, March 28th, 1903). Upon an outbreak of diphtheria an authority erected an isolation hospital near the plaintiff's house. Shortly afterwards one of his children developed diphtheria. Four days previously she had crawled under the wire fence of the hospital and approached close to it. RIDLEY, J., held that there was no evidence of negligence to go to the jury, as the child might have caught the disease in many different ways (*Sherwell* v. *Alton U. D. C.* (1909), 25 T. L. R. 417).

With regard to hospitals for smallpox or fever patients, it has been questioned how far they could be erected in a town. In *Baines* v. *Baker* (1752), 3 Atk. 750, the LORD CHANCELLOR refused an injunction to stay the erection of a smallpox

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hospital in Coldbath Fields, in London, and referred to a case of *R.* v. *Frewen*, where on indictment for a nuisance in erecting such a hospital in Sussex, the defendant was acquitted; and see *R.* v. *Sutton* (1767), 4 Burr. 2116. It is attributed to Lord HARDWICKE that he said in *Baines* v. *Baker*, *supra* (3 Atk., at p. 751), "the fears of mankind, though they may be reasonable ones, will not create a nuisance," but Lord HALSBURY, in *Cowper Essex* v. *Acton L. B.* (1889), 14 App. Cas. 153, at p. 161, said: ". . . It is quite clear that that is not now the law, if the fears are assumed to be reasonable." See also *Att.-Gen.* v. *Nottingham Corporation*, *infra*. In *Managers of the Kensington Sick Asylum District* v. *Gunter* (not reported), WICKENS, V.-C., intimated an opinion in conformity with the previous decision. The rule seems to be that laid down by Lord BLACKBURN in *Metropolitan Asylums District* v. *Hill*, *supra*, "To gather together in one spot patients suffering from infectious disease is lawful, but it must be under such guards as not to endanger the public health by communicating this infectious disease; and, as it seems to me, so as not to produce injury to the rights of the owners of adjoining property by producing a nuisance to it." In *Mutter* v. *Fyfe* (1848), 11 Ct. of Sess. Cas. (2nd ser.), 303, the Court of Session held that a cholera hospital was not necessarily a nuisance, and refused to restrain its erection.

In *Chambers* v. *Managers of the Metropolitan Asylums District* (1881), 25 Sol. J. 834, an interlocutory injunction was granted restraining the defendants until trial from sending any more smallpox patients into their Fulham hospital. The court appear to have acted upon evidence to the effect that the hospital was a centre of contagion. In *Fleet* v. *Managers of the Metropolitan Asylums District* (1884), 1 T. L. R. 80, the defendants had established within 685 yards of the plaintiff's house a smallpox camp. He alleged that the health of the neighbourhood had been endangered by the camp, and that the camp was a nuisance, and claimed an injunction to restrain the defendants from maintaining it. PEARSON, J., held that the plaintiff had failed to prove that there was any danger to him or those residing upon his property, and dismissed the action. In his judgment in the Court of Appeal which affirmed the decision ((1886), 2 T. L. R. 361), COTTON, L.J., pointed out that it was for the plaintiffs to prove an appreciable injury to their property. And see *Saunders* v. *New Windsor* (*Mayor, etc. of*), Law Times, September 18th, 1886, and *Matthews* v. *Sheffield* (*Mayor, etc. of*), Law Times, October 7th, 1887. In a subsequent case, where such appreciable injury was proved, an *interim* injunction was granted, restraining an authority from continuing a smallpox hospital (*Bendelow* v. *Wortley Union* (*Guardians of*) (1887), 57 L. J. Ch. 762; 57 L. T. 849). See also *Garton* v. *Guildford, Godalming and Woking Joint Hospital Board*, Times, March 23rd, 1895.

An authority proposed to establish a smallpox hospital on land of their own in an adjoining district within 240 yards of two public roads, within 90 yards of a much used part of a cemetery, and within 256 yards of the nearest residence. Plaintiff contended that it would amount to a public nuisance as being dangerous to the health of the neighbourhood, and applied for an injunction:—*Held*, that in the present state of science the plaintiff had failed to show that there was a probability that the apprehended danger would in fact ensue (*Att.-Gen.* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 87; 57 J. P. 343). And see *per* SCRUTTON, L.J., in *Att.-Gen.* v. *Cory* (1919), 88 L. J. Ch. 414. Injunctions were refused for the same reason in *Att.-Gen.* v. *Guildford, etc. Joint Hospital Board* (1895), 12 T. L. R. 54; *Harrop* v. *Ossett* (*Mayor, etc. of*), [1898] 1 Ch. 525; 62 J. P. 297. See also *Att.-Gen.* v. *Rathmines and Pembroke Joint Hospital Board*, [1904] 1 I. R. 161.

Quia timet actions.

Where no actual case of injury has arisen, and the action is purely *quia timet*, the plaintiffs must, in order to succeed, show a strong probability that the apprehended mischief will in fact arise (*Att.-Gen.* v. *Nottingham Corporation*, [1904] 1 Ch. 673; 68 J. P. 125). In this case FARWELL, J., considered previous decisions, and quoted, with approval, the following words of FITZGIBBON, L.J., in *Att.-Gen.* v. *Rathmines and Pembroke Joint Hospital Board*, *supra*: "To sustain the injunction the law requires proof by the plaintiffs of a well-founded apprehension of injury—proof of actual and real danger—a strong probability, almost amounting to moral certainty, that if the hospital be established it will be an actionable nuisance. A sentiment of danger and dislike, however natural and justified, certainty that the hospital will be disagreeable or inconvenient, proof that it will abridge a man's

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pleasure or make him anxious, the inability of the court to say that no danger will arise, none of these accompanied by depreciation of property will discharge the burden of proof which rests on the plaintiffs, or justify a merely precautionary injunction restraining an owner's use of his own land upon the ground of apprehended injury to his neighbours." In such a case, too, the court ought to assume that the hospital will be properly managed, and that all precautions that scientific skill and knowledge usually require will be taken (*per* FARWELL, J., in the above case). According to BRAMWELL and COTTON, L.JJ., in *Hill* v. *Metropolitan Asylum District* (No. 1) (1879), 42 L. T. 212, evidence-in-chief is admissible in such an action to show what has occurred in the neighbourhood of other smallpox hospitals carried on under similar conditions. In the House of Lords, Lord SELBORNE appeared to agree with the Lords Justices, but Lord O'HAGAN dissented. (See 47 L. T. 29.) *Sed quære*, whether the admission of such evidence is not wrong in principle as raising a number of side issues on which it is impossible for the court to adjudicate without injury to absent parties (*per* FARWELL, J., in the *Nottingham Case, supra*).

Acquisition of site for hospital.

Sections 175, 176, *post*, p. 412, enable an authority to procure the land required for the site, and ss. 207 *et seq.*, provide for the cost. As to compensation for, and disregard of, restrictive covenants on a compulsory purchase, see *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182, and notes on p. 420, *post*.

The lessor of a dairy farm reserved by the lease the right to sell any part of the farm for "building sites." A local authority purchased a portion as a site for a smallpox hospital, and after they commenced building operations the lessee sued them for damages. The court held that the provision of a site for such a hospital was an exceptional purpose, quite unconnected with the well-understood expression, "land for building sites," and that the defendants had acquired no title to the land (*English* v. *Tynemouth Corporation* (1903), 67 J. P. 239; 1 L. G. R. 177).

For forms of contract in connection with the supply of a temporary hospital, see the Encyclopædia of Forms and Precedents, Vol. X., at pp. 423, 426.

Contracts for the use of premises.

(*d*) For a form of agreement, see the Encyclopædia of Forms and Precedents, Vol. X., p. 419. Before contracting for the use of any building not already in use as a hospital, it will be well to inquire whether there is any covenant which prevents the use of the premises as a hospital. Such a covenant is of the essence of the contract as between lessor and lessee, and relief cannot be granted against a breach of it (*Macher* v. *Foundling Hospital* (1813), 1 V. & B. 188). The use of premises as a hospital has been held to be a "business" where the patients made small payments according to their means (*Bramwell* v. *Lucy* (1879), 10 Ch. D. 691; 43 J. P. 446; *Portman* v. *Home Hospital Association* (1879), 27 Ch. D. 81 n). The establishment of a hospital for outdoor patients, suffering from diseases of the throat, nose, ear, skin, and eye, fistula, and other diseases, was held to be a breach of a covenant in a lease against carrying on certain specified trades, or doing any act "which shall or may be or grow to the annoyance, nuisance, grievance, or damage of the lessor, his heirs, or assigns, or the inhabitants of the neighbouring or adjoining houses," and was restrained by injunction. In order to enforce such a covenant it is not necessary to show that actual damage or pecuniary loss has been sustained. It is sufficient without proving actual risk of infection that sensible people feel a reasonable apprehension of risk and interference with the pleasurable enjoyment of their houses for ordinary purposes, as distinguished from a mere fanciful feeling of distaste entertained by sensitive persons. *Per* LINDLEY, L.J.: Without deciding that the existence of such a hospital is *per se* an annoyance, the apprehension of risk of infection entertained by reasonable men amounts to a breach of the extra protection intended to be given to the covenantee by the introduction into the covenant of the words "annoyance and grievance," in addition to "nuisance or damage" (*Harrison* v. *Good* (1871), L. R. 11 Eq. 338, in limiting the term "nuisance" in a restrictive covenant to that which is a legal nuisance questioned): —*Held*, also, that the covenant was not confined to the lessor and his own sub-tenants, but would be broken by annoyance to the inhabitants of neighbouring or adjoining houses (*Tod-Heatley* v. *Benham* (1888), 40 Ch. D. 80). In *Pembroke* (*Earl of*) v. *Warren*, [1895] 1 I. R. 76, it was held (FITZGIBBON, L.J., diss.) that the establishment of a private hospital for medical and surgical, but not for infectious cases, in a house in Fitzwilliam Square, Dublin, was a breach of covenant against using the house for certain specified

Possible difficulty from restrictive covenants.

businesses, or any other offensive or noisy trade, business, or profession whatsoever. *Cf. Wauton* v. *Coppard*, [1899] 1 Ch. 92, and *Frost* v. *Welsh* (1919), 35 T. L. R. 138.

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Agreement with managers of a hospital.

(*e*) For a form of agreement, see the Encyclopædia of Forms and Precedents, Vol. X., p. 429. The L. G. B. have expressed the opinion that a district council may agree to pay to a general hospital an annual sum in consideration of the treatment of persons sent there by the council in addition to, or in lieu of, payment for each case. See also note (*b*), *ante*, p. 239. As to the power of guardians to subscribe towards the maintenance and support of a hospital or infirmary, see 14 & 15 Vict. c. 105, s. 4; 32 & 33 Vict. c. 63, s. 16; 42 & 43 Vict. c. 54, s. 10. As to the power of the Metropolitan Asylums Board to contract with local authorities in the metropolis, see 54 & 55 Vict. c. 76, ss. 76, 80.

Combination of authorities.

(*f*) Sufficient details are not provided here to enable this combination generally to be carried into practical operation, but if an agreement be properly drawn, it may be possible to effect a combination which will act satisfactorily. The powers of s. 57 of the L. G. A., 1894, may be found useful for this purpose. The M. of H. generally advise, however, that when a hospital is to be provided for two or more districts in combination it should be placed under a joint hospital board (see ss. 279 *et seq.*). Such a board consists of members elected by the authorities concerned, together with such *ex officio* members as the Ministry may by the provisional order determine. Joint boards exercise their powers independently, and, being corporate bodies, are able to buy and sell lands, borrow money, etc.

A board of guardians is not a local authority within the meaning of ss. 4 and 131 of the Act, and cannot combine with a district council in the provision of a joint hospital. If the latter provide a hospital the guardians can agree with them for the reception of patients. See note (*b*), *ante*, p. 239. See a form of agreement in the Encyclopædia of Forms and Precedents, Vol. X., at p. 433.

Under a deed of 1885, the predecessors in title of the plaintiffs and of the defendants, and the corporation of B., were entitled to the joint use of a hospital; and the expenses of maintenance were apportioned between and paid by the several authorities annually. In 1898 by another deed between the same authorities or their successors, the provisions of the deed of 1885 as to management were varied, and it was provided that that agreement might be determined by a six months' notice in writing. Under a third deed in 1905 between the plaintiffs and the defendants and the corporation, and stated to be supplemental to the two previous deeds, the corporation withdrew and were released from all liability under the deeds of 1885 and 1898, and the provisions for management were again varied. In 1906 the defendants gave notice under the deed of 1898 to determine the three deeds and ceased to use the hospital and to contribute to its maintenance:—*Held*, that the provision as to giving notice applied only to the deed of 1898, that the notice given was invalid, and that the deeds of 1885 and 1905 were still subsisting. Some of the constituent authorities had been altered or dissolved by the L. G. A., 1894, and the Stoke-upon-Trent Order, 1908. It was further held that neither under the latter Order, nor under the L. G. A., 1888, s. 62, were the defendants entitled to have the questions between them and the plaintiffs referred to arbitration (*Wolstanton United U. D. C.* v. *Tunstall U. D. C.*, [1910] 2 Ch. 347; 74 J. P. 353). On appeal the judgment was varied by consent, and the disputes referred to an arbitrator ([1911] 1 Ch. 229; 75 J. P. 203).

See s. 2 of the Isolation Hospitals Act, 1901, for the power of a county council to contribute to the expenses of a hospital under this Act.

Recovery of costs of patient's maintenance in hospital.

132. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

As regards ships, see the Public Health (Ships) Act, 1885, *post*. See also the Infectious Disease (Prevention) Act, 1890, s. 12, *post*, as to the detention in a

hospital of a person suffering from infectious disease, and ss. 9, 10 of the same Act as to the burial of persons dying in a hospital of infectious disease.

Note to Section 132.

The wording of this section is peculiar, for although the expenses become a debt due to the authority, the latter "may" (not *must*) take steps to recover the same. The L. G. B. once stated that, in their opinion, the provision contained in the section authorising the recovery from a patient of the expenses of maintenance in hospital is permissive, not compulsory, and that the district council concerned are not required to take steps for recovering such expenses unless they see fit to do so. And in districts to which it has been applied, s. 60 of the P. H. A., 1907, *post*, makes it clear that the authority can exercise a discretion in the matter. If it be decided to take proceedings, the patient may be sued in any court for the recovery of debts, with this qualification, that whereas the usual statute of limitation for civil debts is six years, here it is six months.

Authority may forego payment.

The section does not give a remedy against a person other than the patient, such as a parent or employer. If such a person can be made liable at all, it must be by virtue of a contract express or implied. This note was cited with approval by CHANNELL, J., in a case where an authority sought to recover maintenance from a father whose child had been supported in an isolation hospital. A Divisional Court held that s. 132 imposed no liability on the father, and that a person other than the patient can only be made liable by virtue of a contract express or implied (*Hull Corporation* v. *Maclaren*, Local Government Chronicle, 1898, 585). A hospital for children maintained a convalescent home within the district of a local authority. The matron of the authority's isolation hospital received a telephonic message from the doctor in attendance at the home, requesting the admission of certain children who had developed scarlet fever. In an action against the hospital for the maintenance of the children it was held that there was no liability under this section, but a new trial was ordered on the question of contract (*Farquhar* v. *Isle of Thanet Hospital Board* (1904), 68 J. P. 319; 2 L. G. R. 1310). In *Dunstable Corporation* v. *Costin* (1908), 30 M. C. C. 517, a county court judge found an implied contract by a householder to pay for his children and a servant removed to a fever hospital.

Person liable.

Guardians are not empowered to make a payment in respect of the treatment and maintenance of persons who were not sent to the hospital by their order or that of their officers, except upon application for relief, and then only from the date upon which relief is granted.

Certain pauper children chargeable to the C. Union were, under the provisions of the Poor Law (Certified Schools) Act, 1862, sent to a school in T., which was one of the constituent districts of the B. and D. Joint Hospital Board, constituted by Provisional Order under s. 279, *post*. An outbreak of fever having occurred at the school, some of the children were taken to the hospital of such joint hospital board at the instance of the medical adviser to the school, who was also the medical officer of health for the T. district. The authority of the guardians of the C. Union, which was outside the joint hospital area, was not obtained for the removal of the children. In an action by the joint hospital board against the C. guardians to recover the expenses of maintaining the children:—*Held*, (1) that the plaintiffs could not recover under any statutory provisions; (2) that there was, in fact, no promise by the superintendent of the school to repay the expenses of maintaining the children, and, moreover, that the superintendent had no authority to pledge the credit of the defendants to any expense outside the school; and (3) that there was no such urgency as to create an implied request by the defendants to the plaintiffs to maintain the children in the hospital. *Semble*, even if the case had been one of urgency the plaintiffs would not have been entitled to recover (*Bury and District Joint Hospital Board* v. *Chorlton Union* (1905), 70 J. P. 31; 4 L. G. R. 489).

It has been held that an authority are bound to receive into their hospital all sick inhabitants of their district, whether paupers or not; though if the guardians send their paupers to such hospital, it seems that they must be prepared to pay for their maintenance (*R.* v. *Rawtenstall* (*Mayor, etc. of*) (1894), 10 T. L. R. 643; *Banbury* (*Mayor, etc. of*) v. *Banbury Union* (1900), 22 M. C. C. 484). *Cf.* however, *Farquhar* v. *Isle of Thanet Hospital Board*, *supra*, where Lord ALVERSTONE, C.J., and KENNEDY, J., expressed the opinion that there was no legal obligation to accept patients.

Duty to receive patients.

Section 133.

Power to provide temporary supply of medicine.

133. Any local authority may with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for th poorer inhabitants of their district.

As regards ships, see the 48 & 49 Vict. c. 35, *post*.

Medicine.

Under this section (re-enacted from 31 & 32 Vict. c. 115, s. 10) the L. G. B. authorised the supply of medicine, etc., by several general orders such as those relating to diphtheria, cerebro-spinal fever, etc. See the Orders inserted in the Appendix. The M. of H. also sanction annually a gratuitous supply of diarrhœa mixture to hop-pickers in certain rural districts. In giving sanction the Ministry do so subject to such limitations on the distribution and use of the medicine as may be held to be necessary by the medical man who is responsible for advising as to its ingredients.

It may be noted also that under Art. XIII. of the Public Health (Tuberculosis) Regulations (see App. II., *post*, Vol. II.) an authority may supply medical and other assistance, and facilities and articles reasonably required for detecting and combating tuberculosis, and may distribute leaflets containing information as to the disease. See also Public Health (Prevention and Treatment of Disease) Act, 1913, s. 3, *post*, as to the power of an authority and a county council to make arrange-

Nurses.

ments for treating tuberculosis. As to the power of an authority to provide nurses, see the P. H. A., 1907, s. 67, *post*, and the Isolation Hospitals Act, 1893, s. 15, in App. I., *post*, Vol. II.

As to the power of guardians to enter into arrangements with hospital authorities, see s. 131, notes (*b*), p. 239, *ante*, and (*e*), *ante*, p. 244.

A form of agreement for use under s. 133, *supra*, will be found in the Encyclopædia of Forms and Precedents, Vol. X., p. 431.

PREVENTION OF EPIDEMIC DISEASES.

Power of Local Government Board to make regulations for prevention of diseases.

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic endemic or infectious disease (*a*), the Local Government Board (*b*) may make, and from time to time alter and revoke, regulations for all or any of the following purposes; (namely,)

(1) For the speedy interment of the dead; and

(2) For house to house visitation; and

(3) For the provision of medical aid and accommodation, for the promotion of cleansing ventilation and disinfection, and for guarding against the spread of disease;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

The power to make regulations under s. 130, *ante*, p. 237, and this section is extended by the P. H. A., 1904, the Public Health (Regulations as to Food) Act, 1907, and the P. H. A., 1896. See the relevant provisions of these Acts set out in notes (*a*) and (*e*) to s. 130, pp. 237, 238, *ante*. See also note (*b*) thereto as to regulations made under these sections.

The metropolis is provided for by the P. H. (London) A., 1891, ss. 82, 87, as amended by the P. H. Acts, 1896 and 1904, and the Public Health (Regulations as to Food) Act, 1907.

Note to Section 134.

(*a*) *Epidemic diseases* are "those which prevail among a large portion of the people of a country, rage for a certain time, and then gradually diminish and disappear, to return again at periods more or less remote. The cholera and influenza lately appeared as epidemic diseases in this country, and the continued fevers called synochus and typhus, and what are termed the eruptive fevers, as scarlet fever, the smallpox, the measles, frequently prevail as epidemics in different parts of the country. It is essential to the medical notion of an epidemic disease, that it should be dependent on some common and widely extended cause, of a temporary in contradistinction to a persistent nature."

"Epidemic" diseases.

Endemic diseases are "those peculiar forms of disease which arise spontaneously as it is termed, in a country, or in particular localities, and which are ordinarily produced by the peculiar climate, soil, air, water, etc. Thus ague is the endemic disease of marshy countries or localities, the swelled throat or bronchocele is endemic in the Alps, and the plica in Poland. The word bears pretty much the same signification, in relation to the diseases of a country, that the term *indigenous* does to its plants" (Penny Cyclopædia, *in verbis*). A disease may be endemic in one country (*e.g.*, cholera in certain parts of India), but epidemic when it occurs elsewhere.

"Endemic" diseases.

These diseases, however, must be *formidable*, which implies so extensive an existence as to create a very general alarm.

(*b*) It rests with the M. of H. to determine how far the nature of the disease and the extent of its prevalence is such as to require those extraordinary measures to be taken. They have absolute control over the regulations to be prescribed; but, without prejudice to the generality of their powers under this section, the P. H. A., 1896, *post*, prescribes certain matters for which the regulations may provide in regard to vessels and persons on board, and also enacts penalties for enforcement of the regulations.

135. All regulations and orders so made by the Local Government Board shall be published in the London Gazette, and such publication shall be conclusive evidence thereof for all purposes.

Publication of regulations and orders.

Production of the Gazette is evidence of the making and issuing of the orders. But the copy produced must contain the imprint of the King's printer, and purport to be published by authority. A conviction was quashed where sessions received in evidence an entire page of the Gazette not containing these requisites (*R.* v. *Lowe* (1883), 52 L. J. M. C. 122; 47 J. P. 535).

136. The local authority of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts matters and things as may be necessary for mitigating any such disease (*a*), or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation (*b*).

Local authority to see to the execution of regulations.

(*a*) The functions of the local authority are not confined to the enforcement of the regulations. They may use all other measures which may be recommended to them in the emergency, not at variance with the official regulations.

(*b*) As to penalties, see s. 140, *post*, p. 248, and note thereto. The cost of prosecutions will be a legal charge on the funds of the authority prosecuting, in so far as they are not recovered from the defendants.

137. The local authority and their officers shall have power of entry (*a*) on any premises (*b*) or vessel for the purpose of executing or

Power of entry.

Section 137. superintending the execution of any regulations so issued by the Local Government Board as aforesaid.

(*a*) No warrant or previous demand is required. The refusal to admit will be a wilful obstruction, as to which see s. 140, *infra*, and note thereto.

(*b*) See the definition of *premises*, in s. 4, *ante*, p. 7.

Poor law medical officer entitled to costs of attendance on board vessels.

138. Whenever, in compliance with any regulations so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick (*a*).

Where such services are rendered by any medical practitioner (*b*) who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on ship-board, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction (*c*); and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

(*a*) The meaning of this clause which was taken from 18 & 19 Vict. c. 116, s. 2, appears to be that the captain shall pay to the guardians the extra charges of the medical officer, and the expenses of the treatment.

(*b*) He must be registered under 21 & 22 Vict. c. 90, and 49 & 50 Vict. c. 48.

(*c*) See the definition, *ante*, p. 36, and s. 251, *post*, as to the mode of recovery.

Local Government Board may combine local authorities.

139. The Local Government Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof.

See the further provisions in Part VIII. for the formation of unions of districts for any of the purposes of this Act.

Penalty for violating or obstructing the execution of regulations.

140. Any person who—

(1) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,

(2) Wilfully obstructs (*a*) any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

This section, though not repealed, appears to be superseded by the P. H. A., 1896, s. 1 (3) (for which see note (*g*) to s. 130, p. 238, *ante*), which provides heavier penalties.

See, as to the recovery of penalties, s. 251, *post*.

(*a*) As to the meaning of the word "obstructs," see *Swallow* v. *L. C. C.*, [1916] 1 K. B. 224; 80 J. P. 164.

Note to Section 140.

MORTUARIES, ETC.

141. Any local authority may, and if required by the Local Government Board shall, provide (*a*) and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary (*b*)), and may make byelaws with respect to the management and charges for the use of the same (*c*); they may also provide for the decent and economical interment (*d*) at charges to be fixed by such byelaws of any dead body which may be received into a mortuary.

Power of local authority to provide mortuaries.

This section does not of course apply to the metropolis. The P. H. (London) A., 1891, ss. 88, 93, enables sanitary authorities in the metropolis to provide places for the reception of dead bodies.

(*a*) See s. 175, *post*, p. 412, as to the provisions for acquiring land for a site. Formerly it was optional with an urban authority whether they should provide a mortuary.

The L. G. B., in a memorandum as to the provision of mortuaries by local authorities, made the following observations amongst others:

Memoranda of L. G. B. as to site, construction, etc

In the choice of a site, care should be taken to ensure that the buildings to be erected thereon shall, as far as practicable, be isolated and unobtrusive. It may, indeed, be desirable to place the buildings on the site in such a position and manner as to admit of their being concealed from public view until the entrance-gate to the premises has been passed.

The building should be a substantial structure of brick, stone, or other hard and incombustible material.

Every chamber intended for the reception of corpses should be on the ground or basement floor, and in its construction care should be taken to ensure convenience, decency, cleanliness, and coolness.

The chamber should be lofty, and the area of its floor sufficient to allow freedom of movement between the shelves, slabs, or tables on which the dead are to be placed.

There should be a ceiling to the chamber, or, if it be open to the roof, there should be a double roof with a space of 8 inches at least between the outer and inner covering or with the addition of an intervening layer of felt or other non-conducting material.

Floors should be solid of hard, impervious, and non-absorbent material, with even and smooth surface.

Ceilings should be of good plaster or of other equally suitable material, and the internal surfaces of the walls of hard, impervious, and non-absorbent material, the whole capable of being cleansed and disinfected.

Shelves, slabs, or tables may be conveniently placed around the interior of the chamber. These should be of hard, impervious, and non-absorbent material of adequate strength, and capable of being readily cleansed and disinfected. The height of these should not exceed 3 feet above the floor.

The chamber should be lighted by vertical windows on the north side. Lantern lights, skylights, or roof lights should be avoided. If it is necessary to place windows on the east or west sides, external louvre blinds should be provided for the windows, but in no case should windows on the south side be used.

Adequate and suitable means of constant ventilation should be provided near the floor level and at the highest part of the chamber. All gratings and openings provided for this purpose should be protected by gauze or other suitably perforated material for the exclusion of flies, vermin, etc., and so arranged as to be removable for cleansing.

The entrance to the chamber should be direct, without the intervention of any passage.

The number of chambers should be at least two, so that one may be appropriated exclusively for the bodies of persons who have died of infectious disease, and the other for the bodies of persons whose death has been due to other causes. It may be expedient to place these chambers as far apart as may be practicable, so that

Note to Section 141.

persons visiting the chamber used for the reception of the bodies of those who have died of non-infectious disease may have no reason to fear infection.

Water should be laid on so as to be drawn from a tap within the chamber.

No drain should be within the chamber, but the floor should fall to a channel leading to a trapped gully on the outside of the building.

Mortuaries outside district.

The L. G. B. expressed the view that s. 141 would probably enable a local authority to provide and fit up outside their district a proper place for the reception of dead bodies before interment. They doubted, however, whether the paying for accommodation in the mortuary of an adjoining district could be held to come within the meaning of the section. And further, it appeared to them that the adoption of a site outside the district of the authority might in some cases be attended with difficulty, as for example, in the recovery of expenses under s. 142.

Hiring of mortuaries.

Whether the hiring of buildings, or parts of buildings, would come within the section would depend, in the opinion of the Board, on whether the same would be proper places for the reception of dead bodies before interment.

Joint mortuaries.

In case two or more district councils desire to combine for the provision and maintenance of a mortuary, the necessary powers are given by s. 285.

Private hospital and workhouse mortuaries.

In a case in which a district council proposed to make a contribution towards the cost of a mortuary about to be erected by the authorities of the local cottage hospital, the L. G. B. expressed the view that any such accommodation which might be needed for the purposes of the section should be provided by the district council themselves, and be under their exclusive control.

Workhouse mortuaries can only properly be used for the reception of the bodies of paupers.

Inquest rooms.

The Board and the M. of H. have stated that a district council have no power under the general law to provide accommodation for a coroner in holding an inquest, but where a coroner's district is situate wholly within a municipal borough, the provision of an inquest room may be held to be within the powers of the municipal corporation under s. 105 of the Municipal Corporations Act, 1882.

(*b*) The provisions of this section are extended to the provision of cemeteries by the Public Health (Interments) Act, 1879, *post*, and of crematoria by the Cremation Act, 1902, in App. I., *post*, Vol. II.

Provision of mortuaries under other powers.

Mortuaries may also be provided under the Burial Act, 1852, s. 42, as extended to parishes beyond the metropolis by the Burial Act, 1853. Section 42 is as follows: "It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish . . . for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein; and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and churchwardens and overseers may exercise all such powers as, under the Poor Relief Act, 1819, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish." See s. 7 of the L. G. A., 1894, as to the adoption of the Burial Acts in a rural parish (Brooke-Little's Law of Burials, 3rd ed., p. 102). Without such adoption, however (and it is doubtful whether the Acts can legally be adopted merely for the purpose of enabling a parish council to provide a mortuary), it is competent to the overseers to provide one under the provisions of the Act of 1852 referred to. The necessary directions should be given by the parish council. It will be observed that the overseers have no power to borrow money for the purpose.

For a case in which a hospital porter unsuccessfully claimed compensation in respect of an attack of scarlet fever alleged to have been contracted in cleaning the mortuary, see *Martin* v. *Manchester Corporation*, on p. 240, *ante*.

Model byelaws and L. G. B. memorandum on the subject.

(*c*) See as to the making, etc. of byelaws, ss. 182—188, *post*. The L. G. B. issued model byelaws under the sections. (See Mackenzie and Handford's Model Byelaws, Vol. I., p. 507.) In the memorandum prefixed thereto the Board said: It is chiefly in relation to those cases where the mortuary is used otherwise than in pursuance of an order of a justice under s. 142 of the Act of 1875, or s. 10 of the

Act of 1890, that it is important to consider to what extent sanitary authorities should avail themselves of their power of making byelaws, and also by what other means they may provide for the efficient management of the mortuary, and for the removal and reception of the dead with least danger to the living. **Note to Section 141.**

It is quite possible that at some future time, when the voluntary use of mortuaries may have become more general than at present, sanitary authorities may find it expedient to exercise more fully their power of making byelaws under s. 141. Under existing circumstances, however, it appears to the Board that sanitary authorities may be advised to rely upon good administrative arrangements rather than upon byelaws for the proper management of their mortuaries. For certain purposes byelaws will doubtless be necessary in most districts for which mortuaries have been provided. To such purposes the clauses comprised in the model series of byelaws have reference.

See also note (*b*) to s. 142, *infra*.

(*d*) *Quære*, by whom ? Apparently by the local authority.

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner (*a*), order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer (*b*) to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner (*c*) from any person legally liable to pay the expense of such burial. Justice may in certain cases order removal of dead body to mortuary.

Any person obstructing (*d*) the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds (*e*).

(*a*) *I.e.*, registered under 21 & 22 Vict. c. 90, s. 34, and 49 & 50 Vict. c. 48. For forms of certificate and order, see the Encyclopædia of Forms and Precedents, Vol. X., at pp. 406, 407. The provisions of this section are available only where there is a mortuary.

Where the Infectious Disease (Prevention) Act, 1890, is in force by adoption, s. 8 provides that no person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours, the body of any person who has died of any infectious disease. Section 9 enables means to be taken to prevent the removal, except to a mortuary or for burial, of the body of a person who has died of infectious disease in a hospital. Section 10 enables a justice to order the burial of the body of a person who has died of an infectious disease, if such body has remained unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, etc., or for any body whose retention in a house may endanger health. See these sections *in extenso*, *post*. Further statutory provisions on the subject.

(*b*) This must be the relieving officer of the union or parish in which the mortuary is situated, and care must be taken to have the justice's order served upon him, or otherwise secure that he has notice of the case. He cannot recover the amount himself from the poor rate, but can enter it in his accounts and receive the amount from the guardians. It is to be observed that this provision is confined to cases where the removal has been ordered by a justice. Duty of relieving officer.

Note to Section 142.

(*c*) See s. 251, *post*. If the guardians have paid the relieving officer, he will prosecute the proceedings for their reimbursement.

(*d*) As to the meaning of this word, see *Swallow* v. *L. C. C.*, [1916] 1 K. B. 224; 80 J. P. 164.

(*e*) As to the recovery of this penalty, see s. 251, *post*.

Power of local authority to provide places for *post-mortem* examinations.

143. Any local authority may provide (*a*) and maintain a proper place (otherwise than at a workhouse or at a mortuary) (*b*) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner (*c*) or other constituted authority, and may make regulations (*d*) with respect to the management of such place; *and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such post-mortem examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner* (*e*).

Optional.

(*a*) It will be observed that the M. of H. have no power (as in the case of the non-provision of a mortuary) to compel an authority to provide a place for *post-mortem* examinations.

Site and arrangement.

A *post-mortem* room provided under this Act must not be at a mortuary, and the L. G. B. (in cases coming before them) even objected in some cases to the two buildings being under the same roof. They stated that any *post-mortem* room to be erected in connection with a mortuary should be separated by an intervening space as great as the site will allow. Separate approaches should if possible be provided. In designing the building the window should not be arranged so as to look out directly upon a street, and in addition to other means of lighting provision should be made for a window in such a position as to afford a good light for the examination of organs removed from a body under dissection.

Joint rooms.

Two or more local authorities may combine under s. 285 for the provision of accommodation for *post-mortem* examinations.

Charges.

The L. G. B. stated that no express authority was derived from the section to make a charge for the use of a *post-mortem* room.

In a case in which a parish council proposed to make a payment to an innkeeper for the use of a room and utensils for a *post-mortem* examination on a body exhumed by order of the coroner, the L. G. B. held that there was no legal authority for such a payment either by the parish council or overseers.

(*b*) This exception requires special attention. It is desired that places should be provided for the removal of dead bodies from the rooms of poor people where they die, and it would create on the part of the relatives a repugnance to such removal in many cases if a suspicion arose that such bodies might be subject to anatomical examination. See also note (*a*). 2 & 3 Will. 4, c. 75, provides for dissections, and should be carefully attended to. The corresponding section applicable to the metropolis is 54 & 55 Vict. c. 76, s. 90.

(*c*) See the Coroners Act, 1887, ss. 21—24.

(*d*) Unlike byelaws, these require no confirmation. See s. 188, *post*, which, however, provides for the publication of these regulations.

Substituted provisions as to coroner's orders, fees, etc.

(*e*) The italicised words are repealed by the Coroners Act, 1887. Section 24 of that Act provides that when a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a *post-mortem* examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest. Section 22 provides that no order of payment shall be given, or fee or remuneration paid to any medical practitioner, for the performance of any *post-mortem* examination which may be instituted without the previous direction

Note to Section 143.

of the coroner. Section 25 provides that the local authority for a county or borough having a coroner shall make or cause to be made a schedule of the several fees, allowances, and disbursements which, in the holding of any inquest, may be lawfully paid and made by the coroner holding such inquest (other than the fees paid to medical witnesses under that Act). By s. 26 the coroner is to pay the remuneration or fee to each medical witness (including the fees for *post-mortem* examination) immediately after the inquest: (As to fees to the honorary medical officer of a cottage hospital in which the deceased, being an inhabitant of the district, was a patient, see *Horner* v. *Lewis* (1898), 67 L. J. Q. B. 524; 62 J. P. 345). By s. 27 coroners are to lay their accounts before the local authority of the county or borough; and such authority may, if they think fit, examine the coroner on oath as to such account, and, on being satisfied of its correctness, shall order the treasurer of the county or borough to pay the sum due to him on such account.

There is some difficulty in reconciling the wording of s. 24 of the Act of 1887 with that of s. 143, *supra*, which seems to imply that as a general rule, mortuaries provided under this Act are not to be considered as proper places for the conduct of *post-mortem* examinations ordered by a coroner. The L. G. B. expressed the following views upon the subject: That a coroner cannot order a dead body to be conveyed to a mortuary provided by a local authority and there subjected to a *post-mortem* examination, and that in fact he can only order its removal to a place provided by the authority for the reception of a dead body *during autopsy*. Where, however, a body is lying in a mortuary, whether provided under s. 143 of the P. H. A., 1875, or s. 42 of the Burial Act, 1852, the coroner may order an autopsy to be held there.

PART IV.

LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways (*a*).

Powers of surveyors of highways and vestries under Highway Act, 1835, vested in urban authority.

144. Every urban authority shall within their district exclusively of any other person (*b*) execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways (*c*) under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same (*d*), are vested in and given to the inhabitants in vestry assembled of any parish within their district (*e*).

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint (*f*).

"Main roads."

(*a*) Highways which are "main roads" are (unless repairable by individuals *ratione tenuræ*, or otherwise) repairable by, or at the expense of, the county council. See the L. G. A., 1888, s. 11, and notes thereto, *post*.

Later statutory provisions.

Additional powers and duties are conferred upon district councils by the L. G. A., 1894, s. 26, *post*, in relation to the protection of rights of way and the prevention of obstructions and encroachments.

In rural districts parish councils are given certain powers (under the L. G. A.,

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1894, ss. 8, 13), to acquire rights of way, and to undertake the repair of footpaths not beside roads. Urban district councils can obtain these powers by order of the M. of H. under s. 33 of that Act, in so far as such powers exceed those already possessed by them, *e.g.*, in respect to acquiring rights of way outside the parish.

(*b*) This section determined the authority of a parish vestry, a highway board, or a surveyor of highways within the district of the urban authority.

Difficult questions formerly arose with reference to parts of parishes excluded from urban districts newly formed (see notes to s. 216, *post*). These difficulties were removed by the provisions of ss. 25 and 54 of the L. G. A., 1894, *post*.

Sections 144—148 now apply to rural districts also.

It will be observed that this section applied only to urban authorities, though a rural authority might have obtained the powers of an urban authority under the section by an order under s. 276, *post*. Such an order, however, is now unnecessary, for under the L. G. A., 1894, s. 25, *post*, rural district councils have not only succeeded to all the powers, duties, and liabilities of the rural sanitary authorities and highway authorities who previously acted in their districts, but were invested with all the powers, etc. of urban authorities under ss. 144—148, inclusive, of this Act. Under a proviso to s. 25 of the Act of 1894, the transfer of powers, etc. of highway authorities to rural district councils was in many cases postponed by order of the county council, but the transfer has long been complete. It will be observed that the powers under the Highway Acts which were transferred were those of the pre-existing highway authorities, which were not uniform. Consequently the powers of rural district councils in highway matters are not uniform. See note to s. 149.

Loans of rural council for highway purposes.

Although rural councils have succeeded to the powers of highway authorities under the Highway Acts, the M. of H. hold that any loans required for the purposes of those Acts should be raised, with the sanction of the Ministry under the provisions of the P. H. A., 1875. According to this view, the functions of the justices in quarter sessions under the Highway Act, 1864, s. 47, are superseded.

(*c*) The powers and duties of a surveyor of highways depend upon the Highway Act, 1835, and amending statutes. For further information on this subject, reference must be made to treatises on highway law, *e.g.*, Pratt on Highways, 16th ed., by Mackenzie. One branch of the subject requires notice here, viz., that relating to the liability of an authority as surveyors of highways in cases of accident caused by non-repair, improper condition, or obstruction of the highways. The authorities are now applicable to the case of both urban and rural councils.

Mere non-repair not actionable.

A surveyor of highways was not liable to an action for injury caused by non-repair of the highways (*Young* v. *Davis* (1862), 26 J. P. 743; 7 H. & N. 760; affirmed in Exchequer Chamber (1863), 2 H. & C. 197). The ground of this decision was that the surveyor had no liability other than that which had previously existed in the case of the inhabitants of the parish. It had already been decided that when the duty, the neglect of which was the cause of action, was one attaching to the inhabitants of a county, the remedy was by indictment and not by action (*Russell* v. *Men of Devon* (1788), 2 T. R. 667); and it was held that the county surveyor merely took the place of the inhabitants for the purpose of suing and being sued, but without any further liability (*Mackinnon* v. *Penson* (1854), 9 Ex. 609; 18 J. P. 164). In *Young* v. *Davis*, *supra*, the same principles were held to govern the liability of the surveyor of highways.

In *Hartnall* v. *Ryde Commissioners* (1863), 27 J. P. 599; 4 B. & S. 361, town commissioners were held liable for an accident caused by their neglect of a duty imposed upon them in their corporate capacity by the Towns Improvement Clauses Act, 1847, s. 49; and in *Ohrby* v. *Ryde Commissioners* (1864), 28 J. P. 663; 5 B. & S. 743, where the accident arose from neglect of a similar duty imposed by s. 52 of that Act, they were also held liable. *Hartnall* v. *Ryde Commissioners*, *supra*, was distinguished by WILLES, J., in *Parsons* v. *Vestry of St. Matthew, Bethnal Green*, *infra*, and by KELLY, C.B., in *Wilson* v. *Halifax* (*Mayor of*) (1868), L. R. 3 Ex. 117; 32 J. P. 230: see also *Picton Municipality* v. *Geldert*, p. 255, *post*; and even if it cannot be said to be overruled, its authority has been seriously shaken by the following decision of the Court of Appeal. By the L. Improvement Act, 1846, s. 36, the corporation were declared to be the surveyors of highways for the borough. By s. 37, the control of the streets was vested in them. By s. 38 they were empowered to form

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or pave streets with such materials as they should think fit. By s. 58 it was enacted that they should be liable to be indicted at common law for the want of sufficient repair of any highway in the borough in the same manner as any person or persons liable to the repair of such highways was or were before the passing of the Act. Whilst a horse and trap were being driven along a highway, the horse was injured owing to a hole in the roadway. There was no evidence of misfeasance, but the want of repair was admitted. In an action by the owner of the horse it was held that the liability imposed on the corporation by the Act of 1846 was a liability of the same nature as that placed on the inhabitants of a parish by the common law, which could only be enforced by the Crown by means of an indictment, and that the corporation were not liable to be sued by an individual for damages for non-feasance. The court pointed out that *Hartnall's Case*, *supra*, was decided upon a special statute, and said that since *Cowley* v. *Newmarket L. B.*, *infra*, it is no longer law so far as it lays down a general proposition in regard to liability for nonfeasance where liability to repair highways is imposed by an Act of Parliament (*Maguire* v. *Liverpool Corporation*, [1905] 1 K. B. 767; 69 J. P. 153; and *cf. Law* v. *Corporation of Glasgow* (1916), 54 Sc. L. R. (2) 125).

Mere non-repair not actionable—*cont.*

The Metropolis Management Act, 1855, s. 90, contains provisions similar to that in the text transferring the liabilities of surveyors of highways to the metropolitan vestries. It was held, with reference thereto, that the vestries were under no greater liability than the surveyor would have been, and that an action would not lie against them for an accident caused by the non-repair of a highway (*Parsons* v. *Vestry of St. Matthew, Bethnal Green* (1867), L. R. 3 C. P. 56; 32 J. P. 55). In *Lampard* v. *Commissioners of Sewers of the City of London* (1884), 1 T. L. R. 114, the plaintiff sued in respect of injuries sustained through the defective condition of the pavement, due to the alleged negligence of the defendants. The alleged negligence consisted merely in non-repair, and it was held that he was rightly non-suited. And see *Guardians of Holborn* v. *Vestry of St. Leonard's, Shoreditch* (1876), 2 Q. B. D. 145, *per* LUSH, J.; *Taylor* v. *St. Mary Abbotts, Kensington* (*Vestry of*) (1886), 2 T. L. R. 668, *per* MANISTY, J.; and *Newton* v. *St. Matthew, Bethnal Green* (*Vestry*) (1899), Times, March 29th. The pavement over a cellar in the metropolis has been held to be repairable as part of the highway (*Hamilton* v. *St. George's, Hanover Square*, *post*, p. 276).

In *Nash* v. *Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57, it was held that the defendants could not be held liable for the misfeasance of a former highway authority not resulting in damage in their time, no such liability being passed on to them under the Local Government Act, 1894.

It was questioned in *Wilson* v. *Halifax* (*Mayor of*), p. 254, *ante*, whether a local board were liable to an action for injuries caused by non-repair of a highway; and it was expressly decided that they were not in *Gibson* v. *Preston* (*Mayor of*) (1870), L. R. 5 Q. B. 218; 34 J. P. 342; approved and followed in *Cowley* v. *Newmarket L. B.*, [1892] A. C. 345; 56 J. P. 805.

See also on the subject of nonfeasance, *Municipality of Pictou* v. *Geldert*, [1893] A. C. 524; 56 J. P. 805; *Gibraltar Sanitary Commissioners* v. *Orfila* (1890), 15 App. Cas. 400; *Sydney Municipal Council* v. *Bourke*, [1895] A. C. 433; 59 J. P. 659; and *Harbinson* v. *Armagh C. C.*, [1902] 2 I. R. 538.

Misfeasance actionable,

But nonfeasance in the sense of mere failure to keep in proper repair must be carefully distinguished from misfeasance, in respect of which an action will lie. Where a heap of stones was left by the side of a road without light, and the plaintiff, on a dark night, drove into it, and was injured, the heap having been left there by the negligence of persons employed by the local board to repair the roads, it was held that the board were liable to an action for the negligence of their servants, and that they were not exempt from liability by reason of the corresponding section of the P. H. A., 1848, which imposed on them the same duties and liabilities as a surveyor of highways had (*Foreman* v. *Canterbury* (*Mayor of*) (1871), L. R. 6 Q. B. 214; 35 J. P. 629). The principle of this decision may be thus briefly stated. A surveyor of highways was liable to a stranger for any act of personal negligence, or for the negligence of his own servants. The district council are in the same position, the only decision to the contrary, *Holliday* v. *St. Leonard's, Shoreditch* (1861), 11 C. B. (N.S.) 192, being overruled. See *Mersey Docks* v. *Gibbs* (1866), L. R. 1 H. L. 93, *per* BLACKBURN, J., at p. 119. See also *per* BRETT, L.J., in *Glossop*

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v. *Heston and Isleworth L. B.* (1879), 12 Ch. D., at p. 120, and see also *Jones* v. *Westminster City Council* (1915), 79 J. P. N. 112.

if no contributory negligence.

An authority may, of course, be relieved from liability if the plaintiff is guilty of contributory negligence, or if seeing the danger he deliberately runs the risk (*Butterby* v. *Drogheda Corporation*, [1907] 2 I. R. 134; *Torrance* v. *Ilford U. D. C.* (1909), 73 J. P. 225; 25 T. L. R. 355); and see also *Charlesworth* v. *Darton U. D. C.* (1915), 79 J. P. Newsp. 316, and *Jones* v. *Westminster City Council*, *supra*).

Distinction between nonfeasance and misfeasance.

The following cases show how narrow is the dividing line between what is nonfeasance and what is misfeasance. Appellants, who were both the highway and sanitary authority, dug a trench along a road under their control for the purpose of laying a sewer. When the sewer was laid they filled in the trench and opened the road for traffic. About a week after the road was thrown open the respondent was driving along it in a cab. The cabdriver found that the part of the road where the trench had been filled in was soft; he crossed to the off side to avoid that danger, and ran into a heap of rubbish which had been deposited by a wrong-doer upon that side of the road, with the result that the cab was overturned, and respondent suffered injuries. The appellants knew that the heap of rubbish had been deposited upon the road. The jury found that at the time of the accident the part of the road that had been filled in was dangerous for traffic. The House of Lords held that the appellants were liable on the ground that they were guilty of misfeasance in throwing open the road when it was not fit for traffic, and that such misfeasance was the cause of the accident (*Shoreditch Corporation* v. *Bull* (1904), 68 J. P. 415; 90 L. T. 210), *semble*, the capacity in which the appellants were acting was immaterial (*ibid.*). See especially the speech of Lord HALSBURY in this case, and the interpretation put upon it by the Court of Appeal in *Dawson* v. *Bingley U. D. C.*, [1911] 2 K. B. 149; 75 J. P. 289; and see also *Small* v. *Fermanagh C. C.* (1914), 78 J. P. N. 366, and *Warren* v. *Devon C. C.* (1915), L. T. Journal, February 20th, where in an action in a county court the defendants were held to be liable for an accident caused by throwing open a road for traffic after tar spraying before the surface of such road was in a condition to receive the traffic.

In *Parkinson* v. *W. R. County Council* (1922), 20 L. G. R. 308, the defendants were also held liable for damages due to a road being prematurely thrown open to traffic after repairs not fully completed.

In *Ryan* v. *Tipperary C. C.*, [1912] 2 I. R. 392, the defendants were repairing one half of a road and had left the other half open for traffic. The plaintiff, driving along this other half, collided with a large stone lying close to the grass margin opposite to the stream roller. The jury negatived contributory negligence. It was held that the act of the council in interfering with the road imposed on them the obligation of taking care that the portion left open for use was reasonably fit and safe, and that, the jury having found them to have been negligent in not removing the stone, they were liable in damages. See *Walsh* v. *Mayo C. C.* (1905), 39 Ir. L. T. 189, as to the respective liabilities of a county and district council in connection with the repair of a bridge. A plaintiff driving at night along a street in the defendants' district, drove over the edge of a ravine at the end of it. He alleged that the defendants were guilty of negligence in so laying out the street that it terminated in a ravine, without providing posts and fencing or placing a watchman or lights at the spot to give warning, and also that they had set a trap by reason that the lights in the street were in line with a lamp in W. street on the opposite side of the ravine so as to give the impression that the street was continuous. The road in question was dedicated to the public many years ago, and it was made up by the defendants as a street in the year 1903. The jury found that the street was dangerous; that the unfenced ravine was a trap; that when they made it up and opened it to the public as a street the defendants took no sufficient care to warn the public of the danger; that the public were invited by them to pass along the street as if it was continuous to W. street; and that the plaintiff was not guilty of contributory negligence. It was held that as the defendants knew of the existence of the ravine, their leaving the road with a trap in it known to them and hidden from persons using the road at night was an actionable wrong and a breach of their duty to take reasonable care, assuming such a duty existed; that the defendants having made up the road, their omission to fence was not mere nonfeasance but misfeasance;

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that although when a road is dedicated as a highway, the public, or the road authority, take it as it is with all its defects, yet if a road authority undertake a duty with regard to it and make it up and open it to the public as a made-up street they must exercise due care and have due regard to the safety of those who will use it; and that the defendants, having exercised their powers, as the jury thought, negligently in such a way as to leave a hidden trap for persons passing along the road at night, exposing them to unnecessary and avoidable danger, were liable to the plaintiff. It was held, further, that the defendants having undertaken to light the street, and having done so negligently and inadequately, were also liable on this ground (*McClelland* v. *Manchester Corporation*, [1912] 1 K. B. 118; 76 J. P. 21). This was a judgment of LUSH, J., and in *Moul* v. *Croydon Corporation* (1918), 82 J. P. 283; 16 L. G. R. 595, certain passages in that judgment are explained by that same judge. In that case the plaintiff suffered damages from an accident caused by the swelling and bulging of the wood paving of a carriageway which caused the road surface to rise above its normal level. It was held that no distinction can be drawn between neglect to repair a road out of repair through ordinary wear and tear and neglect to repair a road in disrepair caused by the surface rising above its ordinary level. In *Thompson* v. *Bradford Corporation and Tinsley*, [1915] 3 K. B. 13; 79 J. P. 364, the decision in *McClelland* v. *Manchester Corporation* was followed. There the defendants were altering a street by throwing the footpath into the carriageway, and to do this it was necessary to remove a telegraph pole which existed on the footpath. The removal of the pole was done by the Post Office authorities, and in filling in the hole they did their work negligently, with the result that the plaintiff's steam wagon passing along the highway a few days later sank into the hole and the wagon was considerably damaged. It was held that both defendants were liable, the corporation upon the ground that they were altering the character of part of an old road (*i.e.*, in effect making a new road), and their duty was to so make it that when they threw it open for public use it should be reasonably safe for the purpose for which it was intended to be used; the Post Office authorities upon the ground that having done, perhaps voluntarily, a piece of work, they did it negligently. *Baldwin's, Ltd.* v. *Halifax Corporation* (1916), 80 J. P. 357; 14 L. G. R. 787, was a case of damage by flooding of the plaintiffs' mills during a short period of exceptionally heavy rainfall. In 1867 the defendants obtained statutory powers to construct a road up a very steep and high bank along the base of which runs a stream upon which the plaintiffs' mills are situated. To ease the gradients the plan of the road is necessarily zig-zag in form. On the surface of the hill, especially on the lower slopes, there was a large amount of disintegrated shale caused by weathering and rain storms over a long period. The road was drained by a channel with catchpits at intervals discharging into an earthenware pipe sewer. The road planned and constructed in this way formed a catchwater which drained practically the whole of the hillside. During a very heavy rainstorm water and vast quantities of shale flowed over the road into the valley beneath and flooded the plaintiff's mills. It was held, on the ground of misfeasance, and not mere nonfeasance, that the defendants were liable, and that they had failed to exercise reasonable care in the construction and maintenance of the undertaking.

In *Breen* v. *Tyrone C. C.* (1908), 42 Ir. L. T. 250, an authority who had repaired the planking of a bridge with a defective board were held liable in respect of injuries to a horse, beneath which the board gave way. To lay a deep layer of broken stone across the full width of a road for a considerable distance, instead of rolling it in as the work proceeds, may amount to misfeasance (*Torrance* v. *Ilford U. D. C.* (1909), 73 J. P. 225; 25 T. L. R. 355). So, too, though to leave unfilled a hole which has appeared in a road is only nonfeasance, to fill it with improper material apparently, but not really, solid, may be misfeasance (*Meeling* v. *St. Mary, Newington (Vestry)* (1893), 10 T. L. R. 54).

An action was brought against a corporation to recover damages for injury sustained in consequence of the defendants negligently placing certain pitch or tar on a road, and negligently allowing the same to remain for an unreasonable time, whereby the road became uneven and dangerous. The plaintiff's mare had slipped on a pool of pitch or tar, which had, in consequence of hot weather, oozed up between the setts of wood or stone from the asphalte beneath. The road had been constructed a long time before the accident. A county court judge held that there was no evidence of misfeasance. It was held, on appeal, that as no evidence was given before him that

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the road had been improperly constructed, he was right in concluding that the accident did not arise from the misfeasance of the defendants (*Holloway* v. *Birmingham Corporation* (1905), 69 J. P. 358; 3 L. G. R. 878). In connection with the subject of wood paving the following decision as to the rights of adjoining owners may be noticed. A tramway company's special Act provided that the company should pave a certain road with wood; and they paved it with soft wood creosoted. There was another kind of wood paving consisting of hard wood blocks; but the company considered the creosoted wood more suitable to the locality. Dust and fumes from the creosoted wood caused damage to the plants in a market garden adjoining the road. It was held that the laying of creosoted wood blocks was a non-natural user of the land, and that the company were liable for the damage caused thereby to the market garden. As there were two kinds of wood paving and the company had laid that kind which caused damage, they were not protected by their special Act (*West* v. *Bristol Tramways Co., Ltd.*, [1908] 2 K. B. 14; 72 J. P. 243). In *Dell* v. *Chesham U. D. C.*, [1921] 3 K. B. 427; 85 J. P. 186, the drainage from the surface of a road was rendered impure by the tarspraying of the road surface. The drainage passed through a drain and flowed into and damaged certain watercress beds of the plaintiff. It was held that the defendants had power to spray the road, but that they could not justify the damage to the plaintiff without showing that it was a necessary consequence of the exercise of the power.

A vestry, acting as a sewer authority, laid down a new sewer, and their contractor in so doing, laid bare a wrought-iron service water-pipe, about two and a half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the trench some clay was put round the pipe, but not in such quantity or manner as to prevent it from leaking. A few months afterwards the pipe leaked, and the surrounding clay and earth, being thereby moistened, gave way under a van which the plaintiff was driving, and the van being overturned, the plaintiff was seriously injured. It was held that the vestry knew, or ought to have known, the character and condition of the pipe at the time when it was laid bare, and consequently were liable for negligence in not having taken special precautions against its leaking thereafter (*Cox* v. *Paddington Vestry* (1891), 64 L. T. 566). On the other hand an authority are not liable where some individual, not acting as their agent, interferes with a highway in laying a drain. C., the owner of certain cottages in a highway, received a notice from the defendants requiring him to connect them with the main sewer. In compliance therewith he dug a trench in the road and made the connection to the satisfaction of the defendants' surveyor, and he then filled up the trench. The soil afterwards subsided, and the subsidence caused an accident to the plaintiff while driving in a pony cart. The defendants were both the sewer authority and the highway authority: —*Held*, that the defendants were not liable as the sewer authority, on the ground that the notice did not constitute C. their agent, nor as the highway authority, on the ground that no action would lie against a local board for personal injuries arising from the non-repair of a highway (*Steel* v. *Dartford L. B.* (1891), 60 L. J. Q. B. 256).

It has been held to be nonfeasance only, and therefore not actionable, to allow the surface of a path to slip down into adjoining premises with the result that the path becomes dangerous (*Short* v. *Hammersmith Borough Council* (1911), 75 J. P. 82; 104 L. T. 70); to fail to clean out a highway drain into which roadside "grips" discharge (*Irving* v. *Carlisle R. D. C.* (1907), 71 J. P. 212; 5 L. G. R. 776); to fail to remove overgrowing grass from such grips (*Masters* v. *Hampshire C. C.* (1915), 79 J. P. 493; 13 L. G. R. 879; to fail to lop trees overhanging from an adjoining park owned by the authority (*Tregellas* v. *London C. C.* (1897), 14 T. L. R. 55), *cf. Trinder* v. *G. W. Ry. Co.* (1919), 35 T. L. R. 291, and *Simon* v. *L. G. O. Co.* (1907), 23 T. L. R. 463.

So, too, an authority are not liable for merely omitting to fence a dangerous ditch by the side of a highway (*Wilson* v. *Halifax Corporation* (1868), L. R. 3 Ex. 114; 32 J. P. 230). Where, however, a council pulled down a fence erected to guard a ditch by the side of the road, and had not replaced it, so that the place was dangerous in times of flood, and at such a time a man driving along the road at night drove into the ditch and was drowned, it was held that the district council, in an action against them under Lord Campbell's Act, were liable as for an act of misfeasance (*Whyler* v. *Bingham R. D. C.*, [1901] 1 Q. B. 45; 64 J. P. 771).

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A corporation, who were the highway and lighting authority, erected a post in the centre of a footpath at the entrance thereto, to prevent cattle straying up the path, and near the post they placed a lamp, which they were in the habit of lighting at nights. The plaintiff was passing along the footpath at night, when the lamp was not lighted, and in consequence of the darkness came against the post, and was injured. It was held that an action lay (*Lamley* v. *East Retford* (*Mayor, etc. of*) (1891), 55 J. P. 133). And as to unlit or misleading lamps, see also *Thurrold* v. *St. George's, Hanover Square*, cited on p. 260, *post*; *Donaldson* v. *Woolwich Corporation* (1911), 75 J. P. N. 27, and *McClelland* v. *Manchester Corporation*, cited on p. 257, *ante*. During the recent war there were a number of cases where negligence was alleged by reason of the reduced lighting of public streets arising out of the restrictions required by the Defence of the Realm Orders. As to these see *Brown* v. *Lambeth Borough Council* (1915), 32 T. L. R. 61; *Gt. Central Ry. Co.* v. *Hewlett*, [1916] 2 A. C. 511; 80 J. P. 361; *Morrison* v. *Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277; *Baldock* v. *Westminster City Council* (1919), 83 J. P. 98; 17 L. G. R. 190; *Carpenter* v. *Finsbury Borough Council* (1920), 84 J. P. 107.

A railway bridge spanned a road in the defendants' district. After the erection of the bridge the road was dedicated to the public, and it subsequently became vested in the defendants. At the time of dedication the road was higher at the entrance of the bridge than at the exit, and the road continued in a similar state up to the commencement of the action. The plaintiff, whilst driving under the bridge, met with an accident, his head coming in contact with the bridge in consequence of the road being higher at that part. In an action by him against the defendants for damages for injuries sustained, it was held that as the road was dedicated subject to this obstruction, the action could not be maintained (*Warner* v. *Wandsworth District Board of Works* (1889), 53 J. P. 471). See on the same point, *Fisher* v. *Prowse* (1862), 2 B. & S. 770. Where, however, in repairing a road under a bridge a ridge was improperly left in the surface, a driver, whose head was thereby brought into contact with the bridge, recovered damages against the authority (*Hill* v. *Tottenham U. D. C.* (1898), 79 L. T. 495; 15 T. L. R. 53).

In *Brackley* v. *Midland Ry. Co.* (1916), 80 J. P. 369; 14 L. G. R. 632, a railway company had voluntarily constructed a footbridge close to a station to supplement a level crossing. Although the footbridge was largely used by passengers to and from the station it did not connect different parts of the station, but had direct connection with the highway and was used as part of the same without interruption. In using the steps to the bridge at a time when snow had fallen, the plaintiff fell and sustained injuries. It was held that the footbridge had been dedicated to the public and that the defendants were under no duty to persons using it to maintain and cleanse it or clear away the snow.

An authority who had erected a drinking fountain in a highway were held liable for injuries caused by the fall of a stone displaced by a sightseer climbing thereon (*McLoughlin* v. *Warrington Corporation* (1911), 75 J. P. 57).

A householder, stepping out from his front door, put his foot on a piece of sandstone lying on the pavement and fell. Evidence was given that a heap of sandstone had been tipped by the defendants' servants in the roadway close to the kerb in front of the plaintiff's house, and that subsequently several stones were seen on the pavement. There was no barrier between the kerb and the stones. The plaintiff having been nonsuited, it was held that the nonsuit was wrong, for there was some evidence that the piece of sandstone was on the pavement by the action of the defendants' servants (*Gould* v. *Birkenhead Corporation* (1910), 74 J. P. 105). See also as to liability for obstacles left on a highway, cases in the succeeding paragraphs as to acts of contractors.

Authority's responsibility for contractors, servants, licencees, etc.

In *Taylor* v. *Greenhalgh* (1874), L. R. 9 Q. B. 487; 38 J. P. 599; (1876), 24 W. R. 311, and *Pendlebury* v. *Greenhalgh* (1875), 1 Q. B. D. 36; 40 J. P. 36, two cases arising out of one accident, it appeared that the defendant in each was a parish surveyor of highways appointed by the vestry at a salary. By a resolution of the committee of management it was ordered that a part of a road should be raised, and that the defendant should employ men to do it. He contracted with G. to do the work at so much per yard, the vestry finding the materials, but G. employing his own men. During the progress of the work one-half of the width of the road was

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raised first, and the other half left temporarily about a foot lower. No fence or light was put up to warn persons using the road, and the plaintiffs, driving at night, were upset and injured. The defendant had not personally interfered in doing the work, or in directing the road to be left as it was; and it was held by the Court of Queen's Bench that he was not liable to the plaintiffs either at common law, or by reason of the Highway Act, 1835, s. 56, the court holding that the persons whose negligence caused the accident were not servants of the defendant so as to bring him within *Foreman* v. *Canterbury (Mayor of)*, *ante*, p. 255. But the Court of Appeal, taking a different view of the facts rather than of the law, directed judgment to be entered in each case for the plaintiffs. They did not decide whether the defendant would have been liable for his contractor's negligence, if he had employed him to do everything that was necessary; but they pointed out that, for the safety of the public, it was necessary that the work while in progress should be fenced and lighted at night, and that the defendant had only contracted for labour; therefore the duty of fencing and lighting remained on him, and he was responsible for negligence in performing this duty, whereby the damage was caused.

In *Reid* v. *Darlington Highway Board* (1877), 41 J. P. 581, a highway board finding that the wall of a bridge needed repair, instructed their surveyor to employ S., a contractor, to do the work. S. thereupon, by his servants, did the work, and the surveyor did not interfere. In the course of the work, S.'s servants left stones in the highway, which were not lighted at night, and R. drove into them, and was injured. It was held that there was no evidence upon which the board or its surveyor could be held liable for the injury to R. As to the liability of the contractor in such a case, see *Blake* v. *Thirst* (1863), 2 H. & C. 20, which may be compared with the previous case of *Overton* v. *Freeman* (1852), 11 C. B. 867.

A highway board directed a heap of stones to be placed on the side of a road, at a place which was used as a depôt for stones used in repairing. The carter, in placing the stones there, allowed them to project a few inches on to the road. A person driving along the road at night, drove against the heap and met his death. His widow and children thereupon brought an action under Lord Campbell's Act against the board. It was held that, inasmuch as the carter was really a servant of the defendants, and not a contractor, they were liable (*Tucker* v. *Axbridge Highway Board* (1888), 53 J. P. 87; 5 T. L. R. 26).

A metropolitan vestry caused a heap of sand to be laid in a street near a gas lamp which was lighted under contract by a gas company. The lamp, by accident, was not lighted one night, and the plaintiff drove into the heap and sustained injury. It was left to the jury to say whether the leaving of the heap unlighted was negligence, and the jury awarded damages (*Thurrold* v. *St. George's, Hanover Square*, Times, December 7th, 1898).

A gas company, in the repair of mains in a highway, placed a fire pail on which was a ladle containing molten lead on unenclosed land adjacent to a highway. A passer-by accidentally knocked over the fire pail at a time when the same was unattended and unguarded, and the plaintiff, a young child, was injured by the molten lead. It was held that the gas company was liable on the ground that what they were doing was dangerous unless precautions were taken to guard persons using the highway from the danger. *Crane* v. *South Suburban Gas Co.*, [1916] 1 K. B. 33; 80 J. P. 51.

The rule deducible from the more recent decisions (see notes to s. 265, *post*, appears to be that where a contractor is employed to do work which will necessarily entail danger to the public unless proper precautions are taken, the authority employing him will be responsible if he fails to take such precautions, *e.g.*, if he leaves the road improperly made up in ridges (*Hill* v. *Tottenham U. D. C.* (1898), 79 L. T. 495), or does not properly fill in and ram trenches (*Gray* v. *Pullen* (1864), 29 J. P. 69; 5 B. & S. 970; *Thompson* v. *Bradford Corporation*, *ante*, p. 257), or negligently breaks pipes laid in the road (*Hardaker* v. *Idle U. D. C.* (1896), 1 Q. B. 335; 60 J. P. 196), or leaves stones or material unguarded and unlighted on the highway (*Penny* v. *Wimbledon U. D. C.*, [1899] 2 Q. B. 72; 63 J. P. 406; *Clements* v. *Tyrone C. C.*, [1905] 2 I. R. 542; *Lancaster* v. *West Ham L. B.* (1886), 2 T. L. R. 820); and see also *Pinn* v. *Rew* (1916), 32 T. L. R. 451. And *cf.* *Wilson* v. *Hodgson's Kingston Brewery Co.* (1915), 80 J. P. 39; 32 T. L. R. 60, and *Kimber* v. *Gas Light and Coke Co.*, [1918] 1 K. B. 439; 82 J. P. 125. On the other hand, for

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mere casual or collateral negligence of a contractor's labourer, *e.g.*, leaving a tool on the road, the authority are probably not liable (*Penny* v. *Wimbledon U. D. C.*, *supra*, *per* A. L. SMITH, L.J.).

As to the distinction between a contractor and servant, see, further, *Steel* v. *S. E. Rail. Co.* (1855), 16 C. B. 550; *Reedie* v. *L. & N. W. Rail. Co.* (1849), 4 Ex. 244; *Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392.

As to the liability of an authority for the acts of a licensee reference may be made to *Gilbert* v. *Trinity House Corporation* (1886), 17 Q. B. D. 795). They are not responsible for those of a person acting under independent statutory powers unless they are bound to supervise the work (*Barham* v. *Ipswich Dock Commissioners* (1885), 54 L. T. 23; *Steel* v. *Dartford L. B.*, *supra*: *Burrows* v. *City of London Sewer Commissioners* (1888), 4 T. L. R. 262).

Penalty for obstruction.

A cart was damaged through contact with a heap of stones which had been allowed to remain after nightfall on a highway. The stones had been laid there by a carter who acted under the orders of a person to whom the surveyor of a local board had given general directions as to repairing the road; but the surveyor did not himself know that the stones had been laid on the road. It was held that the facts did not show any evidence of an offence by the surveyor within the meaning of the Highway Act, 1835, s. 56 (*Hardcastle* v. *Bielby*, [1892] 1 Q. B. 709; 56 J. P. 149). It seems to have been assumed in this case that the section would apply to a surveyor of a highway authority; but such is apparently not the case, the authority being themselves surveyors of highways within the meaning of the section. See *R.* v. *Bradford*, [1908] 1 K. B. 365; 72 J. P. 61.

Liability of council as sewer authority or water authority.

Although a district council are not liable for injuries sustained in consequence of their nonfeasance as surveyors of highways, there are cases where, by reason of their acting in other capacities, they may be liable for some negligent omission which occasions injury to persons using the highway. In one case, as the plaintiff was riding along a highway, under which was a sewer, his horse trod on a grid or grating, put there to drain the surface water off the highway into the sewer. The grid being in a defective state, gave way, and the horse's leg was injured. The plaintiff sued the local board, who were surveyors of the highways under the P. H. A., 1848, ss. 68, 117, and in whom the sewers were vested by ss. 43, 45 of the same Act. It was held that, though the defendants were not liable as surveyors of the highways, they were liable as owners of the sewer, of which the grid formed part, for negligence in not keeping the grid in a proper state (*White* v. *Hindley L. B.* (1875), L. R. 10 Q. B. 219; 39 J. P. 533). In another case, the defendants, who were the highway and the sewer authority, employed a contractor to construct a sewer under a highway within their district. The contractor dug a trench, which he afterwards filled in with earth, and the roadway was apparently made good. The work was done under the directions and to the satisfaction of the defendants' surveyor. Some months later a subsidence of the soil in the trench took place, without any assignable cause, leaving the road apparently sound. The plaintiff's horse, in consequence of the surface giving way, fell into the trench and was injured. It was held that there was evidence that the work of filling in the trench had been negligently and improperly done; that the defendants were liable as the sewer authority, and, perhaps, also as the highway authority (the latter liability apparently depending on the negligence of the defendants' surveyor, as in *Pendlebury* v. *Greenhalgh*, *ante*, p. 259) (*Smith* v. *West Derby L. B.* (1878), 3 C. P. D. 423; 42 J. P. 615). As to the liability of the contractor in such a case, see *Hyams* v. *Webster* (1868), L. R. 4 Q. B. 138; 31 J. P. 439. All, or nearly all, of the cases on the subject were reviewed in *Borough of Bathurst* v. *MacPherson* (1879), 4 App. Cas. 256; 43 J. P. 827, where a municipality in New South Wales were held by the Privy Council to be liable for an accident caused by a defective drain, the neglect to repair which had led to the falling away of the brickwork and the consequent formation of a dangerous hole in the road. The governing fact in this case was that the conduct complained of was, in the view of the Privy Council, misfeasance (*per* Lord HOBHOUSE in *Municipality of Picton* v. *Geldert*, [1893] A. C., at p. 531; and see *Sydney Municipal Council* v. *Bourke*, *ante*, p. 255, and *Andrews* v. *Merton & Morden U. D. C.* (1921), 43 R. C. 194 (a county court case). In such cases, however, it is necessary for the plaintiff to prove that there has been negligence on the part of the authority (*Lambert* v. *Lowestoft Corporation*, [1901] 1 K. B. 590; 65 J. P. 326).

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As to what amounts to proof of negligence when a sewer has given way and caused a subsidence, see *ibid.* and *Hart* v. *St. Marylebone Borough Council* (1912), 76 J. P. 257; 10 L. G. R. 502.

The predecessors of a district council in 1893 constructed a sewer with manholes under a main road repairable by the county. In 1906 the cover of one of the manholes projected above the granite setts surrounding it, and the setts projected above the surrounding surface of the roadway. The plaintiff when cycling was upset by the manhole, and he sued the council. The jury found that the manhole was defective and was the cause of the accident, and that the defects in the manhole were due to improper construction. The Court of Appeal held that there was no evidence of improper construction in the first instance, but ordered a new trial as to whether there had been negligence in maintaining the manhole (*Winslowe* v. *Bushey U. D. C.* (1908), 72 J. P. 259).

In *Papworth* v. *Battersea Borough Council*, [1916] 1 K. B. 583; 80 J. P. 177, a local authority had paved and made up a road in 1883. For the purpose of carrying away the surface water they had constructed a gully near the side of the road covered with a grating, but the grating and its framework caused a considerable depression in the road. The work however was done with due care and skill and in accordance with the usual method at the time. In June, 1912, the plaintiff, whilst cycling along the road and passing over the grating, owing to the excessive depression was thrown from her bicycle and sustained injuries. The jury found that the depression was dangerous to a careful cyclist, but that the local authority were not negligent in not having discovered the defect. It was held that as the local authority in the execution of their statutory powers had exercised due care and skill in the original construction of the grating and as they were not negligent in not having discovered the danger, they were not liable though the work turned out subsequently to be dangerous.

White v. *Hindley L. B.*, *ante*, p. 261, was approved in *Blackmore* v. *Vestry of Mile End Old Town* (1882), 9 Q. B. D. 451; 47 J. P. 52. In that case a water meter, the property of a water company, and used for measuring the water supplied by them to the defendants, the vestry of a metropolitan parish, for watering the streets, was placed by the defendants in a box of theirs sunk in the footway of one of the streets, and covered with an iron flap. The defendants were surveyors of highways under the Metropolis Management Act, 1855, s. 95, and were by s. 116 authorised to cause the streets in their parish to be watered. The plaintiff while walking along the street stepped on to the iron flap, and by reason of its having worn smooth and dangerous, he fell and was injured. It was held that although the defendants might not as surveyors of highways be liable for negligence in not keeping the flap in a proper state, they were liable in their capacity as the authority for watering the street, in which capacity they had placed the flap there. Where it is the duty of the consumer to maintain the necessary apparatus of water supply he is primâ facie liable if damage ensues arising out of its disrepair, thus in *Mist* v. *Metropolitan Water Board* (1915), 79 J. P. 495; 13 L. G. R. 874, the cover of a meter pit in the pavement was held to be part of the apparatus, and therefore the consumer was primâ facie liable. In another case the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway, the valve cover projected an inch above it. The plaintiff's horse stumbled over the valve cover and was hurt. In an action against the defendants, who were both the water authority and the highway authority, for the injury to the horse, it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway, and that the plaintiff was entitled to recover (*Kent* v. *Worthing L. B.* (1882), 10 Q. B. D. 118; 47 J. P. 23). The last-mentioned decision was, however, questioned in *Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462, where it was held that a water company, authorised or required by Act of Parliament to maintain a water plug in a highway, is not liable in damages to a passer-by who falls over the plug by reason of the road having worn away round it, the plug itself being in good order. The Court of Appeal intimated that perhaps *Kent* v. *Worthing L. B.* could be distinguished on the ground that the defendants were both highway authority and water authority, but that, if not, it could not be upheld. And it was expressly overruled by the Court of Appeal on precisely similar facts in *Thompson*

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v. *Brighton (Mayor, etc. of)*; *Oliver* v. *Horsham L. B.*, [1894] 1 Q. B. 332; 58 J. P. 297. See, further, as to accidents due to water plugs, the cases collected in notes to s. 66, *ante*, at p. 144.

A local authority, under the powers of the P. H. A., 1848, required the defendant's predecessor in title, together with other frontagers, to do certain work on a street which had since become a highway, and on default being made, did the work themselves and charged the expenses to the frontagers. The work included the laying of two sloping iron carriage plates over the gutter between the roadway and the footway to facilitate the passage of horses and carriages from the roadway to the stables of two of the houses, one of which now belonged to the defendant. The two carriage plates did not meet by a few inches, thus leaving a small hole into which the defendant stumbled. This hole was opposite the defendant's house. In an action by the plaintiff against the defendant for damages for personal injuries, it was held that the carriage plates formed part of the highway, which was vested in the local authority, and that the defendant was not liable (*Jones* v. *Rew* (1910), 79 L. J. K. B. 1030; 74 J. P. 321). In *Horridge* v. *Makinson* (1915), 79 J. P. 484; 84 L. J. K. B. 1294, the defendant was the owner of a house abutting upon a street which had been made up and declared a public highway. In the lower part of the wall of the house there was an opening into a coal shoot, and the local authority, by raising the level of the footpath, covered the lower portion of this opening. To admit of access thereto, however, they left an opening next the wall in the footpath and did not put any grating or cover over this opening. The plaintiff, whilst passing along the footpath, fell into this opening and sustained injuries. It was held that the defendant was not liable, the hole amounted to a nuisance but it was left by the local authority and the defendant could not be said to have permitted the continuance of the nuisance. And see *Wilson* v. *Hodgson's Kingston Brewery Co.* (1915), 80 J. P. 39; 85 L. J. K. B. 270. In that case the defendants were sued for damages for personal injuries to the plaintiff, who passing along a pavement adjoining the defendant's premises, tripped over flaps to a cellar grating which had been negligently left open and fell into the cellar. The cellar grating was open to receive delivery of barrels of beer, which delivery being made by an independent contractor and not under the defendant's orders, it was held that the defendants were not liable to the plaintiff.

Liability for breach of agreement under the Tramways Act, 1870.

A corporation are liable for damages caused by non-repair of a road which they have agreed to repair under s. 29 of the Tramways Act, 1870 (*Howitt* v. *Nottingham Tramways Co.* (1883), 12 Q. B. D. 16). Some doubt was cast upon that decision by the Court of Appeal in *Steward* v. *North Metropolitan Tramways Co.* (1885), 16 Q. B. D. 556; 50 J. P. 324, but this was removed by *Alldred* v. *West Metropolitan Tramways Co.*, [1891] 2 Q. B. 398; 55 J. P. 824, and *Barnett* v. *Mayor, etc. of Poplar*, [1901] 2 K. B. 319.

Indictments for non-repair of highways.

In *R.* v. *Poole* (*Mayor, etc. of*) (1887), 19 Q. B. D. 602; 52 J. P. 84 (where the earlier cases were discussed), an indictment against a municipal corporation for non-repair of a highway alleged that the highway was in decay, and that the corporation "acting by the council as the sanitary authority for the urban district" ought to repair and amend the same, etc., but there was no allegation to show how the defendants were liable, nor did the indictment conclude "against the form of the statute." At the trial the judge intimated his willingness to make any amendment within his power, but no amendment was in fact made. After a verdict for the Crown, it was held:—(1) that the indictment was bad, and that the defendants were entitled to judgment *non obstante veredicto*; (2) that even assuming the necessary amendments to be made, the defendants were entitled to judgment, there being nothing in the P. H. A., 1875, to make the urban sanitary authority liable to indictment for non-repair in the same sense as that in which the parish or persons liable *ratione tenuræ* were liable. In a subsequent case, however, it was held that an indictment would lie under the Highways and Locomotives (Amendment) Act, 1878, s. 10, against an urban sanitary authority acting as the highway authority for non-repair of a highway, for the section in question provides a statutory mode of raising the question of the authority's liability to repair (*R.* v. *Wakefield* (*Mayor, etc. of*) (1888), 20 Q. B. D. 810; 52 J. P. 422). In *R.* v. *Morse*, [1904] W. N. 114, it was held that the procedure under s. 95 of the Highway Act, 1835, has not been impliedly repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 10, and accordingly a rule *nisi* for a *certiorari*, asked for on the ground that the proper

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parties to be indicted were a rural district council, whose funds were liable to bear the expense of the repairs, was discharged. In *R.* v. *Shipley Parish Council* (1897), 61 J. P. 488; 13 T. L. R. 486, an endeavour was unsuccessfully made to indict a parish council for non-repair of a highway.

No indictment for manslaughter by non-repair.

Trustees liable under a local Act to repair a road were held not liable to be indicted for manslaughter for the death of a person in consequence of an accident caused by the non-repair of the road (*R.* v. *Pocock* (1851), 17 Q. B. 34).

Compromise of indictments.

The plaintiffs, a local board, had preferred an indictment against the defendants for interfering with a public road. At the trial of the indictment, an agreement for compromise was made between the solicitors, and sanctioned by the judge, and it was afterwards confirmed by a deed executed by the plaintiffs and defendants. By this deed the defendants covenanted to restore the road, which they had broken up, within seven years, and the plaintiffs covenanted that, when this had been done, they would consent to a verdict of "not guilty" on the indictment. The defendants having failed to restore the road, the plaintiffs sued them on their covenant, claiming specific performance and damages:—*Held*, that as the indictment was for a public injury, the agreement to consent to a verdict of "not guilty" was against public policy and illegal, and that the plaintiffs could not maintain an action on the defendants' covenant. The court maintained the view taken in *Keir* v. *Leeman* (1846), 9 Q. B. 371; and refused to follow the dictum of JAMES, L.J., in *Fisher & Co.* v. *Apollinaris Co.* (1875), L. R. 10 Ch. D., at p. 302 (*Windhill L. B.* v. *Vint* (1890), 45 Ch. D. 351).

Liability for altering level of highway.

Where a local authority acting as surveyors of highways occasion damage to any person, they are not liable to compensate him under s. 308, *post*. In *Burgess* v. *Northwich L. B.* (1880), 6 Q. B. D. 264; 45 J. P. 256, it appeared that a highway had subsided owing to brine-pumping operations, and the houses abutting on it had subsided also. The surface of the road remained continuous, so that traffic could still pass along it; but a hollow was formed, and the road at its new level was liable to be flooded so as to render traffic impossible. The defendants placed materials on the road, so as to raise the surface at the point of the lowest subsidence about four feet higher than at the commencement of the work. The plaintiffs raised their houses simultaneously and claimed compensation for the expense of so doing. It was stated as a fact in the case that, having regard to the obstruction by floods, the raising of the road was reasonably necessary to put the road into a proper state for traffic; but excluding the consideration of floods, the raising to the extent described was not necessary to put the road into a proper state. It was held that, as the highway was vested in the defendants (s. 149, *post*, p. 273), no action of trespass could have been maintained by the plaintiffs, even if more materials had been placed on the road than a surveyor of highways could justify; that the plaintiffs had no right to have the road maintained at the level to which it accidentally and recently sank; that the works of the defendants were not done "in exercise of any of the powers" of the Act within s. 308, which mean powers created by the Act, and not merely powers transferred by s. 144 from the surveyor to the local board, but were done, if not entirely in pursuance of their duty as surveyors of highways, at all events in exercise of such powers as surveyors of highways have; and consequently that the plaintiffs were not entitled to compensation (*cf.* also *Atherton* v. *Cheshire C. C.*, on p. 281, *post*). The decision in *Burgess* v. *Northwich L. B.* seems to follow a dictum of BRAMWELL, L.J., in *Nutter* v. *Accrington L. B.*, *post*, p. 282. In a later case a road had subsided, and was partially restored not long afterwards. The road having been again raised forty years later, BOWEN, L.J., held that the burden of proof was upon the local board to show that they had simply restored the road to its original level, and in the absence of evidence, held that they were acting under the powers given by the P. H. A., 1875, and were liable to make compensation accordingly (*Pearsall* v. *Brierley Hill L. B.* (1883), 11 Q. B. D. 735; 47 J. P. 628; affirmed (1884), 9 App. Cas. 595; 49 J. P. 84), and see also *Rochford* v. *Essex C. C.* (1916), 85 L. J. Ch. 281; 14 L. G. R. 33, where the highway authority were held liable for the damage to a fence caused by the additional earth pressure thereon as the result of raising the level of highway.

In *Hoare* v. *Kingsbury U. D. C.*, [1912] 2 Ch. 452; 76 J. P. 401, a building owner, on depositing plans for the erection of houses, entered into an agreement with the council whereby he agreed to throw a strip of land into an adjoining highway, and

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the council agreed to make up and adopt such strip. It was held that the agreement was one for the widening of a highway made by the council, not as the highway authority, but as an urban authority under s. 154 of this Act, and that consequently s. 174, *post*, p. 397, applied to it. *Cf.* also *Arnott* v. *Whitby U. D. C.*, cited on p. 283, *post*.

Right and duty to repair, remove obstructions, etc.

A person who is under no duty to repair a highway or bridge has, as against the owner of the soil, no right to repair it (*Campbell Davys* v. *Lloyd*, [1901] 2 Ch. 518); if he does so without objection being taken, he cannot recover his expenditure from the party liable to do the repairs (*Macclesfield Corporation* v. *G. C. Rail. Co.*, [1911] 2 K. B. 528; 75 J. P. 369). Nor, in general, is a member of the public entitled to abate a nuisance in a highway (*Dimes* v. *Petley* (1850), 15 Q. B. 276; *Roberts* v. *Rose* (1865), L. R. 1 Ex. 82; 30 J. P. 5). Under the L. G. A., 1894, s. 26, *post*, it is the duty of every district council to prevent as far as possible the stopping or obstruction of any public right of way. In *Bagshaw* v. *Buxton L. B.* (1875), 1 Ch. D. 220; 40 J. P. 197, the court refused to grant an injunction to restrain a local authority from removing an enclosure of the highway which amounted to a nuisance; but did not decide whether an authority as surveyor of highways could lawfully abate an obstruction before obtaining a judicial determination that it was in fact an obstruction. It has now, however, been expressly decided that an urban district council have power to remove an obstruction without any preliminary conviction, and to recover from the person who placed it on the highway the expenses of removing it (*Reynolds* v. *Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296); and it seems clear that a rural council is in the same position (*Louth U. D. C.* v. *West* (1896), 65 L. J. Q. B. 535; 60 J. P. 600; *Harris* v. *Northamptonshire C. C.* (1897), 61 J. P. 599). See the latter case as to the powers of a county council in this behalf. In *Gaby* v. *Palmer* (1916), 80 J. P. 212; 14 L. G. R. 491, which was a case decided under a local Act, it was held that an owner of land was liable to remove and otherwise make secure certain unsafe ground abutting upon a highway from which there was an apprehended danger of obstruction to the public using the highway. See also generally, *National Telephone Co.* v. *St. Peter Port* (*Constables of*), [1900] A. C. 317), and *Webster* v. *Bakewell R. D. C.* (1916), 80 J. P. 437; 14 L. G. R. 1109. As to the obstruction of a highway by the loading and unloading of carts, see *Att.-Gen.* v. *Brighton and Hove Co-operative Supply Association*, [1900] 1 Ch. 276; *Att.-Gen.* v. *W. H. Smith & Son* (1910), 74 J. P. 313; 26 T. L. R. 482, and *cf.* also *Ruoff* v. *Long & Co.*, [1916] 1 K. B. 148; 80 J. P. 158, a case where damage was caused by the interference of third parties with a standing vehicle; and *Simpson* v. *Metropolitan Water Board* (1917), 15 L. G. R. 629. As to obstruction by theatre queues, see *Lyons, Sons & Co.* v. *Gulliver*, [1914] 1 Ch. 631; 78 J. P. 98.

Use of steam rollers.

The plaintiffs, a gas company, laid pipes beneath certain streets, as they were bound by statute to do, for the purpose of supplying gas to light the streets and houses therein. The streets were vested in the defendants by certain statutes which gave them the authority of the surveyor of highways, with the duty to repair, but prescribed no particular mode of repair. The defendants used steam rollers as being a mode of repair most advantageous to both the ratepayers and the public, but such rollers were so heavy as to frequently injure the plaintiffs' pipes, although laid sufficiently deep not to have been injured by the ordinary mode of repair if such rollers had not been used. The plaintiffs were held entitled not only to damages for the injury done, but also to an injunction to restrain the defendants from using steam rollers in such a way as to injure the pipes (*Gas Light and Coke Co.* v. *St. Mary Abbotts, Kensington* (*Vestry of*) (1885), 15 Q. B. D. 1; 49 J. P. 469; and see *Gas Light and Coke Co.* v. *St. George's, Hanover Square* (1887), 3 T. L. R. 581; *Alliance and Dublin Consumers Gas Co.* v. *Dublin C. C.*, [1901] 1 I. R. 402). See also as to liability for an explosion due to the fracture of a gas pipe by a steam roller, *Driscoll* v. *Poplar District Board* (1897), Times, December 8th; as to liability for an explosion due to the fracture of a gas pipe in the course of laying a sewer, *Hardaker* v. *Idle D. C.*, [1896] 1 Q. B. 335; 60 J. P. 196; and as to liability for damage to pipes by a traction engine, *Armagh Union* v. *Bell*, [1900] 2 I. R. 371, and *Chichester Corporation* v. *Foster*, [1906] 1 K. B. 167; 70 J. P. 73; *cf.* also *Cavan C. C.* v. *Kane*, [1910] 2 I. R. 644. As to the liability to make bridges fit to carry traction-engine traffic, see *Sharpness New Dock Co.* v. *Att.-Gen.*, *Att-Gen.* v. *G. N. Rail. Co.*, *post*, p. 272.

Stopping up highways.

With reference to the powers and duties of a district council in stopping up

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highways, reference may be made to *United Land Co.* v. *Tottenham L. B.* (1884), 13 Q. B. D. 640; 48 J. P. 726. It was there held that the charges of a solicitor employed by an urban authority to conduct proceedings at the instance of an individual for the stopping up or diverting of a highway under the Highway Act, 1835, ss. 84, 85, are not "expenses" within the meaning of s. 84 of that Act so as to be recoverable under *ibid.* s. 101. And, *semble*, all the steps required by s. 85 to be taken for the purpose of obtaining the order of sessions, are ministerial acts which ought to be done by the surveyor of the authority appointed under s. 189, *post*, p. 447.

Trusts for repair of highways and bridges.

As to the right of a council to receive the income of a charity given for the repair of a road or bridge, see *Att.-Gen.* v. *Day*, [1900] 1 Ch. 31; 64 J. P. 88; *In re Hall's Charity, Severn Commissioners* v. *Hall's Charity Trustees and Worcestershire C. C.* (1912), 76 J. P. 9; 28 T. L. R. 32.

A local board had not, as surveyors of highways, any authority over turnpike roads (*per* BRAMWELL, B., in *Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375. And see s. 148, *post*, p. 269, and *Lancashire JJ.* v. *Rochdale* (*Mayor of*), cited in the notes thereto).

Limitation of actions.

It was held in *Taylor* v. *Meltham L. B.* (1878), 47 L. J. C. P. 12, that an action against a local authority as surveyors of highways might be commenced within the six months allowed by s. 264, *post* (now repealed), and need not be commenced within the three months prescribed by the Highway Act, 1835, s. 109. And, again, where a local board in repairing a road negligently left a heap of stones upon it, whereby injury was caused to the plaintiff, it was held that the board were acting under this Act and not under the Highway Act, and that the period of limitation was, therefore, six and not three months (*Kay* v. *Atherton L. B.* (1878), 42 J. P. 792). But where a corporation were surveyors of highways by a local Act, which made them subject to all such liabilities as any surveyors of highways were subject to by virtue of the law for the time being in force, and there was nothing to show that the corporation were acting under this Act, it was held that the period of limitation was three and not six months (*Burton* v. *Corporation of Salford* (1883), 11 Q. B. D. 286; 47 J. P. 614). This case was followed in *Graham* v. *Newcastle-upon-Tyne* (*Mayor, etc. of*) (No. 2), [1893] 1 Q. B. 643; 57 J. P. 596, and *Taylor* v. *Meltham L. B.* and *Kay* v. *Atherton L. B.* were expressly overruled, it being held that an urban authority constituted surveyors of highways by s. 144 of the P. H. A., 1875, were not liable to be sued for negligence in the management of highways unless the action was commenced within three months under s. 109 of the Highway Act, 1835. However, s. 264 of this Act and s. 109 of the Highway Act, 1835, are both now repealed by s. 2 of the Public Authorities Protection Act, 1893, *post*, by s. 1 of which a period of six months' limitation next after the act, default or neglect complained of, or in the case of a continuance of injury or damage, six months next after the ceasing thereof, is made generally applicable.

As to the discretion of a district council as surveyors of highways when it is sought to make a road in their district a public highway, see *R.* v. *Dukinfield* (1863), 27 J. P. 805; 4 B. & S. 158.

Highway Acts.

(*d*) The chief of these are 5 & 6 Will. 4, c. 50; 4 & 5 Vict. c. 51; 8 & 9 Vict. c. 71; 25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101; 28 & 29 Vict. c. 107; 41 & 42 Vict. c. 77; 45 & 46 Vict. c. 27; 54 & 55 Vict. c. 63.

The provisions for making highway rates are contained in ss. 216, 217, *post*.

Limit on highway rate abolished.

(*e*) By the Highway Act, 1835, s. 29, the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, at a meeting specially called for that purpose, was necessary before such rate might exceed 2*s.* 6*d.* in the pound on the whole in any one year. That section was held to be impliedly repealed by the provisions in the text in the case of a highway rate made by an urban authority under this Act (*Dyson* v. *Greetland L. B.* (1883), 47 J. P. 260; (1884), 13 Q. B. D. 946; 48 J. P. 596). Having regard to the L. G. A., 1894, s. 25, cited in note (*b*), this decision apparently applies also in the case of a precept for highway expenses made by a rural authority.

Ministerial acts.

(*f*) As to the construction of this paragraph, see *United Land Co.* v. *Tottenham L. B.*, *ante*, p. 265. An urban district council *must* appoint a surveyor (s. 189, *post*, p. 447); there is no such obligation upon a rural district council, *i.e.*, to appoint

a surveyor for sanitary purposes as distinct from highway purposes. See notes to ss. 189 and 190, *post*. See also the definition of "surveyor" in s. 4. **Note to Section 144.**

Inhabitants of urban district not liable to rates for roads outside district.

145. The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district: Provided that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

This section would appear to be now largely spent. Until rural district councils succeeded to the powers and duties of highway authorities under the L. G. A., 1894, s. 25, certain areas outside some urban districts were treated as forming part of such districts for highway purposes. See also notes to s. 216, *post*.

There may be cases in which it is reasonable that ratepayers in an urban district should bear the whole or part of the expense of making or repairing a road in another district, as for example a road which is principally required or used as an approach to a borough hospital. The Highways and Bridges Act, 1891, in App. I., *post*, Vol. II., may be referred to.

Power of urban authority to agree as to making of new public roads.

146. Any urban authority may agree (*a*) with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly (*b*) become on completion (*c*) highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads (*d*).

As to the application of this section in rural districts, see the L. G. A., 1894, s. 25, cited *ante*, p. 254, and *post*.

(*a*) This agreement should be in writing and under seal: *cf. Hoare* v. *Kingsbury U. D. C.*, in notes to s. 154, *post*, p. 323, and *Tunbridge Wells Improvement Commissioners* v. *Southborough L. B.*, in notes to s. 148, *post*, p. 270; but see *Bromley L. B.* v. *Lansbury*, in note (*c*), *infra*. The section is incorporated from 21 & 22 Vict. c. 98, s. 39.

Application of section.

The section seems designed to meet the case of the construction of new roads, not the making up of existing roads, though the decision in *Bromley L. B.* v. *Lansbury*, *infra*, has a contrary tendency. In a case which came before them, the L. G. B. held that a rural district council who had not been invested with the powers of an urban authority under s. 150 in regard to a particular private street, had no power to enter into an agreement with owners under s. 146 for the making up of the street and the payment of expenses by the owners. See also note (*d*), *infra*.

(*b*) That is, in accordance with the agreement.

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(*c*) See *Saunders* v. *Brading Harbour Improvement, Railway and Works Co.* (1885), 52 L. T. 426, cited at length in the notes to s. 152, *post*, p. 319.

In *Bromley L. B.* v. *Lansbury* (1894), Times, Dec. 5th, a new road was laid out in 1878; in 1884, buildings having been erected on each side of it, an arrangement, not under seal, was made between defendant, one of the frontagers, and the plaintiffs, that it should be made up to the satisfaction of the plaintiffs' surveyor, and should be kept in repair by the frontagers for six months, and that the plaintiffs should then adopt it. This arrangement was carried out, but the plaintiffs did not, after the expiration of six months, give the usual notice of adoption under s. 152. Subsequently, in consequence of heavy traffic, the road fell into disrepair, and the plaintiffs having paved it under s. 150, *post*, p. 286, sought to recover a share of the expense from the defendant in the county court. It was held there, and on appeal by GRANTHAM and LAWRANCE, JJ., that the plaintiffs were bound by the arrangement come to in 1884, having accepted the work then done by defendant.

By an agreement made in 1879 between owners of property and a local authority, it was agreed that a road should be dedicated to the public and accepted by the authority as a highway repairable by the inhabitants at large, subject, nevertheless, to the authority retaining the power of calling upon the frontagers for the time being to make up such parts of it as were not already properly made up, and reserving to the authority all the powers under s. 150, *post*, p. 286. The roadway was properly made up at the date of the agreement, but the footway was not paved. At a later date the authority, who had by that time adopted the Private Street Works Act, 1892, proposed to pave the footway under that Act and to charge the expenses against the frontagers. Upon objections to the provisional apportionment by frontagers who had bought from the original owners, it was held that the powers sought to be enforced did not apply to a highway repairable by the inhabitants at large, and that, the road having been accepted as such, the parties to the agreement could not thereby give jurisdiction to proceed under the Act (*Mayor, etc. of Folkestone* v. *Marsh* (1906), 70 J. P. 113; 94 L. T. 511). In a later case arising out of the same agreement, the authority sued a frontager for apportioned expenses. The frontager had taken no objection to the provisional or final apportionments under ss. 7 and 12 of the Act. *Marsh's Case*, *supra*, was apparently not cited; and it was held that if the meaning of the agreement was that the roads were, as between the parties, to be deemed highways repairable by the inhabitants at large, and that—by implication—the corporation undertook not to put into force the Private Street Works Act, 1892 against the frontagers, it was *ultra vires*. If the deed had no such meaning, it was no bar under the circumstances of the case to proceedings under s. 14 of that Act (*Mayor, etc. of Folkestone* v. *Rook* (1907), 71 J. P. 550; 6 L. G. R. 69).

(*d*) It will be noted that the first agreement mentioned in the section may be made by the authority, *i.e.*, by a mere majority. But the latter agreement requires the consent of two-thirds of the members. The object is obviously to prevent jobbery in the matter. The L. G. B. held that this provision did not enable a district council to contribute towards the cost of putting a private street (*i.e.*, an existing street) in repair. In such a case procedure should be under the Private Street Works Act, 1892, s. 15. See also note (*a*), *supra*.

Power of urban authority to construct or adopt public bridges, etc. over or under canals, etc.

147. Any urban authority may agree (*a*) with the proprietors of any canal railway or tramway to adopt and maintain any existing or projected bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors (*b*); they may also, with the consent of two-thirds of their number (*c*), agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge viaduct or arch (*d*), or of the purchase of any adjoining lands

required for the foundation and support thereof or for the approaches thereto. Section 147.

As to the application of this section in rural districts, see the L. G. A., 1894, s. 25, cited *ante*, p. 254, and *post*, p. 933.

See also the Highways and Bridges Act, 1891, s. 3, in App. I., *post*, Vol. II., which enables a local authority to agree with any other local authority or county council for the construction, re-construction, alteration, or improvement, or the freeing from tolls of any main road, or other highway, or of any bridge within the jurisdiction of any of the parties.

(*a*) The agreement should be under seal, see note (*a*) to preceding section. This section is re-enacted from 21 & 22 Vict. c. 98, s. 40. It is not easy to see how the authority can adopt a *projected* bridge; but doubtless it means that if the projected bridge be made, the authority may adopt it afterwards. The L. G. B. stated that an agreement should be a permanent one, not one for a limited time.

(*b*) As to the liability of a railway company to construct bridges, see the Railways Clauses Consolidation Act, 1845, ss. 46 *et seq.*; *S. E. Rail. Co.* v. *R.* (1853), 4 H. L. Cas. 471; *Dartford R. D. C.* v. *Bexley Heath Rail. Co.*, [1898] A. C. 210; 62 J. P. 227. For decisions as to the obligations of railway and canal companies to maintain widen, raise or strengthen bridges (with their roadways, approaches and fences) and level crossings, see note (*d*) to the next section.

(*c*) Note the same difference as in the last section, note (*d*), with reference to the entering into these agreements.

(*d*) The bridge, viaduct, or arch must be one which will be part of a public street or road repairable by the inhabitants at large. Where a district council proposed to make a contribution to a railway company towards the cost of erecting a bridge which the company reserved power to close for one day in each year, or to remove without payment of any compensation to the council, the L. G. B. held that such an agreement was not authorised by the section, and declined to sanction a loan.

The L. G. B. held the provision of a subway beneath a railway to be within the section.

Power of urban authority to enter into agreements with persons liable to repair streets as to repair, etc. thereof.

148. Any urban authority may by agreement (*a*) *with the trustees of any turnpike road* (*b*), *or* with any person liable (*c*) to repair any street (*d*) or road, or any part thereof, or with the surveyor of any county bridge(*e*), take on themselves the maintenance repair cleansing or watering of any such street or road or any part thereof (*f*), or of any road over any county bridge, and the approaches thereto (*e*), or of any part of the said streets or roads within their district *and may remove any turnpike gates, toll gates, or bars which may be situated within their district, and may erect other turnpike gates, toll gates, or bars in lieu thereof*, on such terms as the urban authority and such *trustees or* person or surveyor as aforesaid may agree on:

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorised by this Act.

Any executors, administrators, guardians, trustees, or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to

Section 148. *any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.*

The italicised portions of this section were repealed by the S. L. R. A., 1898, turnpike trusts being now obsolete.

As to the application of this section to rural district councils, see the L. G. A., 1894, s. 25, and note (*b*) to s. 144, *supra*.

(*a*) The agreement should be under seal (*Tunbridge Wells Improvement Commissioners* v. *Southborough L. B.* (1888), 60 L. T. 172). In that case the plaintiffs had covenanted with an individual to construct and maintain a road (along which he was giving them a right of way) in the district of the defendants. The plaintiffs and defendants subsequently agreed that in consideration of the former assenting to a transfer of area—subsequently sanctioned by Parliament—the latter would "adopt" the road and "dedicate" it as a public highway:—*Held*, that (apart from the want of seal) the agreement was not authorised by the words of this section.

As to how far an agreement made under this section with respect to the repair of the roadway on a railway bridge continues in force when a tramway company have widened the bridge under special statutory powers, see *Teddington U. D. C.* v. *L. & S. W. Rail. Co.* (1910), 74 J. P. 119; 102 L. T. 328.

Agreements as to turnpike roads.

(*b*) An agreement as to turnpike roads made before December 31st, 1870, under the corresponding section of the Act of 1858, was held not to prevent the roads from being still turnpike roads on December 31st, 1870, within the meaning of the Highway Act, 1878, s. 13 (*West Riding JJ.* v. *R.* (1884), 8 App. Cas. 781; 48 J. P. 228).

Turnpike trusts, after the commencement of this Act, continued in force as to turnpike roads within an urban sanitary district (*per* Lord BLACKBURN in *Lancashire JJ.* v. *Rochdale* (*Mayor of*) (1883), 8 App. Cas. 497; 48 J. P. 20). In that case the corporation of R. was the highway authority within the borough. Under ss. 47—50 of the Towns Improvement Clauses Act, 1847, the obligation to repair all public highways within the town was imposed upon the corporation, and the turnpike trustees were forbidden to lay out any money on any road within that area. By a local Act in 1872 the boundaries of the borough were enlarged, and all the provisions of the Act relating to the town were extended to the enlarged area. The effect was that further portions of turnpike roads were for the first time brought within the borough and within the operation of ss. 47—50. It was held that these further portions, being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within s. 13 of the Highways and Locomotives (Amendment) Act, 1878; and that the county authority were not liable to pay half the expenses of their maintenance.

By a local Act of 1855, incorporating the Towns Improvement Clauses Act, 1847, the maintenance of all highways within a district, including a turnpike road, became vested in the commissioners. The trustees of the turnpike road thereupon ceased to repair it within the limits of the district. The turnpike trust expired in 1877. The commissioners were the highway authority for the district, which was a highway area within the Highway Act, 1878, s. 13, *post*, Vol. II. It was held that, notwithstanding the special legislation in 1855, providing for the maintenance of part of the road by the commissioners, it only ceased to be a turnpike road within the meaning of s. 13, on the expiration of the turnpike trust in 1877, and must therefore be deemed to be a main road, and that consequently one-half of the expenses of the maintenance of the part within the highway area should be paid to the highway authority by the county authority (*Newton-in-Makerfield Improvement Commissioners* v. *Lancashire JJ.* (1884), 15 Q. B. D. 25; 49 J. P. 149).

Agreement with persons liable *ratione tenuræ*.

(*c*) This section enables an authority to agree with a person who is liable *ratione tenuræ* to repair some highway that, in consideration of a money payment, the authority shall take over in perpetuity the liability for such repair; such an agreement effectually discharges the land from the liability (*In re Earl of Stamford and Warrington, Payne* v. *Grey* (No. 2), [1911] 1 Ch. 648). The Highway Act, 1835,

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s. 62, and the Highway Act, 1862, s. 35, provided a procedure by which highways repairable *ratione tenuræ* in separate highway parishes and in highway districts respectively could become parish highways. That procedure, however, contains restrictions which are sometimes inconvenient, *e.g.*, in the matter of the application of the compensation money, and in such cases it may be found desirable to proceed under this section. In the case of a settled estate a liability to repair *rationæ tenuræ* is not an " incumbrance " to the redemption of which capital moneys may be applied (*In re Hodgson*, [1912] 1 Ch. 784).

Bridges.

(*d*) A bridge which is not a " county bridge " (as to which see note (*e*), *infra*) is a " street " as defined by s. 4, *ante*, p. 15.

Obligations of railway and canal companies in respect of bridges, their roadways, approaches, etc., and level crossings.

Where, in order to fulfil their obligation under the Railways Clauses Consolidation Act, 1845, s. 46 (see s. 147, note (*b*), *ante*, p. 269), a railway company make a bridge to carry a highway over the railway, they are bound to keep the surface of the highway on the bridge and its approaches in repair as being a necessary part of the bridge (*L. & Y. Rail. Co.* v. *Bury* (*Mayor, etc. of*) (1889), 14 App. Cas. 417 ; 54 J. P. 197 ; *Glasgow Corporation* v. *Caledonian Rail. Co.*, [1909] A. C. 138). And see *Buckley* v. *L. & N. W. Rail. Co.* (1896), Times, June 12th. But this liability does not extend to a bridge over the railway which was not strictly made under s. 46 (*L. & N. W. Rail. Co.* v. *Ogwen R. D. C.* (1899), 63 J. P. 295 ; 80 L. T. 401) ; nor does it extend to a bridge made to carry an occupation road which has since become a highway (*Glasgow Corporation* v. *Caledonian Rail. Co.*, *supra*). It has been held that when, to comply with s. 46, the railway is carried over a highway the company are not bound to repair the highway under the bridge, even though it has been lowered in order to give headway (*L. & N. W. Rail. Co.* v. *Skerton* (1864), 28 J. P. 518 ; 5 B. & S. 559) ; but the correctness of this decision has been doubted (*Hertfordshire C. C.* v. *G. E. Rail. Co.*, *infra*).

As to a railway company's liability to repair the roadway on a bridge and its approaches when such bridge was made under a special Act prior in date to the Railways Clauses Consolidation Act, 1845, see *Att.-Gen.* v. *Midland Rail. Co.* (1909), 73 J. P. 337 ; 100 L. T. 866).

As to their liability where a bridge originally built by them has been widened by a tramway company under special statutory powers, see *Teddington U. D. C.* v. *L. & S. W. Rail. Co.* (1910), 74 J. P. 119 ; 102 L. T. 328 ; and as to their liability in some cases to widen a bridge in accordance with the Railways Clauses Acts, see *Rhondda Valley U. D. C.* v. *Taff Vale Rail. Co.*, [1909] A. C. 253 ; 73 J. P. 257.

A railway company were authorised to cross a highway by means of a level crossing ; and, the line being at a higher level than the road, they constructed permanent slopes in order to bring the road gradually to the level of the line, and so cross it. It was held that they were under no obligation to keep in repair the surface of these graded approaches (*West Lancashire R. D. C.* v. *L. & Y. Rail. Co.*, [1903] 2 K. B. 394 ; 67 J. P. 410). In a later case, however, under exactly similar circumstances, except that the company's special Act was prior in date to the Railways Clauses Consolidation Act, 1845, the company was held liable, and the correctness of the earlier decision was questioned (*Hertfordshire C. C.* v. *G. E. Rail. Co.*, [1909] 1 K. B. 368 ; 2 K. B. 403 ; 73 J. P. 84, 353).

As to the liability of a canal company under a Canal Act to repair both the fabric of a bridge carrying a road over their canal and also the roadway on such bridge, see *Macclesfield Corporation* v. *G. C. Rail. Co.*, [1911] 2 K. B. 528 ; 75 J. P. 369 ; as to their liability to repair the approaches to such a bridge, see *Nottingham C. C.* v. *M., S. & L. Rail. Co.* (1894), 71 L. T. 430, and *Att.-Gen.* v. *Oxford Canal Navigation*, *post*, p. 272. A statute passed after the Statute of Bridges (22 Hen. 8, c. 5) empowered a company to make a cut across a highway, and imposed upon them the obligation of making and maintaining at their own cost a bridge to carry the highway across the cut. It was held that the company was only liable to maintain the bridge and its actual approaches with the roadway thereon, the extent of the approaches being a question of fact ; and that their liability did not necessarily extend to a distance of 300 feet from each end of the bridge. The court held that the rule as to 300 feet laid down by the Statute of Bridges, applies to bridges repairable by the county or by prescription, but not to cases where the liability is directly imposed by a later Act (*Herts C. C.* v. *New River Co.*, [1904] 2 Ch. 513 ; 68 J. P. 552). An appeal in this case was dismissed by consent, on July 2nd, 1906. See also an earlier

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case on the same point, *R.* v. *Staffordshire and Worcestershire Canal Co.* (1901), 65 J. P. 505.

By a private Act the defendants were not to be liable "to repair or amend any part of the roads approaching to any bridge or bridges made, or to be made, over the said canal . . . beyond or further than the extremity of the wing-wall" of the bridges, but nothing therein contained was to exonerate them from repairing the bridges and the "wing-walls, ramparts, and side-banks thereof":—*Held*, that the liability of the defendants to repair was limited to the bridges, and included nothing else; and that they were, therefore, not liable to repair fences by the side of approaches to bridges over their canal (*Att.-Gen.* v. *Oxford Canal Navigation* (1903), 72 L. J. Ch. 285; 67 J. P. 130).

A railway company were liable under their special Act to maintain a bridge over a canal at a specified height above the towing-path. Subsidence having taken place from causes beyond the control of the company, it was held that it was their duty to raise the bridge to its original height above the path (*Rhymney Rail. Co. and Others* v. *Glamorgan Canal Navigation* (1904), 91 L. T. 113; 20 T. L. R. 593). So, too, in another case of subsidence, *North Staffordshire Rail. Co.* v. *Hanley Corporation* (1909), 73 J. P. 477; 26 T. L. R. 20, it was held that the liability to repair a bridge over a canal (the bridge being in fact incapable of repair) involved the liability to reconstruct it at such a height as to avoid causing a nuisance to users of the canal.

For a case in which a canal company, liable to repair a bridge carrying a highway, were held to be only liable to keep the bridge in repair in the condition in which it was made in accordance with the requirements of the Commissioners as originally provided in a private Act of 1791, see *Sharpness New Docks, etc. Co.* v. *Att.-Gen.*, [1915] A C. 654; 79 J. P. 305. The decision in this case was followed and applied in the case of a railway bridge in *Att.-Gen.* v. *G. N. Rail. Co.*, [1916] 2 A. C. 356; 80 J. P. 337. In that case it was held that where a public highway is carried over a railway constructed under the provisions of s. 46 of the Railway Clauses Consolidation Act, 1845, the railway company is liable to maintain the bridge in the condition as to strength in relation to traffic in which it was at the date of completion, and is not liable to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may reasonably be expected to pass over it according to the standard of the present day.

Reference may be made to *In re Woking U. D. C.* (*Basingstoke Canal*) *Act*, 1911, [1914] 1 Ch. 300; 78 J. P. 81, for a decision as to liability under a local Act in respect of bridges across an abandoned canal. And see also *Att.-Gen.* v. *N. E. Rail. Co.*, [1915] 1 Ch. 905; 79 J. P. 500. In that case a swing bridge had to be provided by a Navigation Co. and on the merger of the navigation company with a railway company it was proposed to construct a fixed bridge instead of a swing bridge. It was held that as the swing bridge was clearly for the benefit of the public an injunction would be granted to restrain the alteration.

Towing paths.

The provisions of this section might apply to the towing-path of a canal Such a towing-path may be dedicated as a highway (*Grand Junction Canal Co.* v. *Petty* (1888), 21 Q. B. D. 273; 52 J. P. 692). The question to be determined when a dedication by a statutory body is alleged is: "Would a dedication of the land have been inconsistent with the enjoyment by the statutory body of the land for the purposes of their undertaking?" This question has been considered in the following cases: *North London Rail. Co.* v. *St. Mary, Islington* (*Vestry*) (1872), 27 L. T. 672, and *Taff Vale Rail. Co.* v. *Pontypridd U. D. C.* (1905), 69 J. P. 35; 93 L. T. 126 (bridges over railways); *Stretford U. D. C.* v. *Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 19 T. L. R. 546 (railway property); *Att.-Gen.* v. *L. & S. W. Rail. Co.* (1905), 69 J. P. 110; 21 T. L. R. 220; *Arnold* v. *Morgan*, [1911] 2 K. B. 314; 75 J. P. 105; *Holloway* v. *Egham U. D. C.* (1908), 72 J. P. 433; 6 L. G. R. 929; *Edinburgh Magistrates* v. *N. B. Rail. Co.* (1904), 6 F. 620, and *G. C. Rail. Co.* v. *Balby-with-Hexthorpe U. D. C.* [1912], 2 Ch. 110; 76 J. P. 205 (paths along or across railway lines or sidings); *G. W. Rail. Co.* v. *Solihull R. D. C.* (1902), 66 J. P. 772; 86 L. T. 852, and *L. & Y. Rail. Co.* v. *Davenport* (1906), 70 J. P. 129 (reservoir embankments); *R.* v. *Leake* (1835), 3 B. & Ad. 469 (a fen embankment); *Grand Junction Canal Co.* v. *Hall* (1840), 1 M. & G. 392 (canal bridge); *Greenwich Board of Works* v. *Maudslay* (1870), L. R. 5 Q. B. 397; 35 J. P. 850 (sea wall);

Dedication by statutory bodies.

Tyne Improvement Commissioners v. *Imrie* (1899), 81 L. T. 174 (pier); *Arnott* v. *Whitby U. D. C.* (1909), 73 J. P. 369; 101 L. T. 14 (quay); *Coats* v. *Herefordshire C. C.*, [1909] 2 Ch. 579; 73 J. P. 355 (disused tramway); *Paterson* v. *St. Andrew's Magistrates* (1881), 6 App. Cas. 833 (road over public golf links); *Att.-Gen.* v. *Hemingway* (1917), 81 J. P. 112; 15 L. G. R. 161 (path along edge of cliffs to disused harbour); *Thames Conservators* v. *Kent*, [1918] 2 K. B. 272; 83 J. P. 85 (towing path of river); and *cf. Att.-Gen.* v. *G. N. Rail. Co.*, on p. 272, *ante*. **Note to Section 148.**

(*e*) A bridge may be a "county bridge," whether it be repairable by the inhabitants of the county or by an individual (*R.* v. *Chart and Longbridge* (1870), L. R. 1 C. C. R. 237; 34 J. P. 454). In general, however, a county bridge is repairable by the inhabitants of the county. Where a bridge carrying a public highway was built prior to the County Bridges Act, 1803, the county council can only avoid their common law liability to repair it by pleading and proving that the liability to repair is upon some other person (*Att.-Gen.* v. *West Riding of Yorks C. C.* (1903), 67 J. P. 173; 19 T. L. R. 192; *R.* v. *Norfolk C. C.* (1910), 26 T. L. R. 269; *R.* v. *Berks C. C.* (1901), Times, June 24th). By the Highway Act, 1835, s. 21, "if any bridge shall hereafter be built which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless that nothing herein contained shall extend to, or be construed to extend to, exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge or the land arches thereof." In the case of a bridge repairable by the county but built before the passing of that Act, the roadway over it and the approaches for a distance of 300 feet from each end of such bridge, are repairable by the county. See 22 Hen. 8, c. 5, s. 7. Where for any reason a bridge in a highway repairable by the inhabitants at large is not considered a county bridge, and no other persons are by usage, prescription, or statute bound to repair it, it is repairable as part of the highway by the inhabitants of the parish. By 33 & 34 Vict. c. 73, s. 12, "where a turnpike road shall have become an ordinary highway all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: Provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the Highway Act, 1835." This section was discussed in *R.* v. *Dorset* (*Inhabitants of*) (1881), 45 L. T. 308. There a toll bridge was built over a river to connect the back streets of W. with the country districts on the other side. A turnpike road was made in connection with the bridge, both bridge and road being constructed under one Act. There were separate trusts of the bridge and the road, but the trustees of the one were trustees of the other. The bridge was within the borough of W. On the expiration of the trusts the county of D., in which the bridge was situated, repaired the road, but the bridge fell into disrepair. The county was thereupon indicted for its non-repair and was found guilty:—*Held*, that the county was rightly convicted, for, as there was nothing in the case to cast the liability to repair on the borough, it became on the expiration of the trust a county bridge repairable by the inhabitants of the county. See, for other decisions on the section, *R.* v. *Somerset* (1878), 42 J. P. 501; 38 L. T. 452; *R.* v. *Buckingham* (1878), 43 J. P. 175. "County bridges" and the roadways thereof.

(*f*) In *Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375, MELLOR, J., thought that these words did not authorise the division of the road into longitudinal sections, so that the local board should undertake the charge of the footpath, and the turnpike trustees that of the roadway. But COTTON, L.J., thought otherwise. "Part of a street."

Regulation of Streets (a) and Buildings.

149. All streets (*b*), being or which at any time become highways repairable by the inhabitants at large (*c*) within any urban district (*d*), and the pavements stones and other materials thereof, and all buildings Vesting of streets, etc. in urban authority.

Section 149. implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority (*e*).

The urban authority shall (*f*) from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they think fit (*g*), and may place and keep in repair fences and posts for the safety of foot passengers (*h*).

Any person who without the consent of the urban authority wilfully displaces or takes up (*i*) or who injures the pavement stones materials fences or posts of or the trees (*k*) in any such street shall be liable to a penalty (*l*) not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured: he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

Provisions of the P. H. A., 1907.

(*a*) Part II. of the P. H. A., 1907, contains several important provisions relating to highways repairable by the inhabitants at large, but they will only be operative when applied to any district by an Order of the M. of H. The provisions in question (for the full text of which see the Act, *post*), deal with the following subject-matters:

Crossing for cattle, etc. over footways (s. 18);
Damages to footways by excavations (s. 20);
Deposit of building materials or excavations (s. 29);
Dangerous places to be repaired or enclosed (s. 30);
Fencing lands adjoining streets (s. 31);
Hoards to be securely erected (s. 32);
Exemption of buildings of railway company and others (s. 33);

Reference should also be made to s. 22 (buildings at corner of streets), and s. 26 (entrances to courts, etc., not to be closed), of the same Act.

Other statutory provisions as to streets.

The Tramways Act, 1870 (in App. I., *post*, Vol. II.), contains provisions whereby a district council may be enabled to construct and maintain a tramway within their district. Their consent is also necessary to enable other persons to obtain a Provisional Order under the Act, unless such consent is dispensed with by the Board of Trade. The Act also contains important provisions as to the right of a tramway company to interfere with roads, sewers, etc., for the purchase of the undertaking by the local authority, etc.

See also (in App. I., *post*, Vol. II.), the Gas and Waterworks Facilities Acts, 1870 and 1873, as to the necessity for the consent of the local authority for a Provisional Order under these Acts, and the Electric Lighting Acts, 1882, 1888 and 1909, and the Electric Lighting (Clauses) Act, 1899, as to interference with streets under those Acts.

For the statutory provisions as to the use of locomotives and motor cars on public roads, see the Locomotive Act, 1861; the Locomotives Act, 1865; the Highways and Locomotives Amendment Act, 1878; the Locomotives on Highways Act, 1896; the Locomotives Act, 1898; the Motor Car Act, 1903; the Ministry of Transport Act, 1919, and the Roads Act, 1920. The Acts of 1865 and 1903 are "continued" annually by the Expiring Laws Continuance Act.

(*b*) See the definition of *street* in s. 4, *ante*, p. 15. See also the notes to s. 144, *ante*, p. 253, and note (*b*) to the next section, *post*, p. 288.

Highways repairable by the inhabitants at large.

(*c*) The fact that a road has been repaired by the public, is some evidence that it is a highway and repairable by them: but it is not conclusive evidence on the point (*R.* v. *Thomas* (1857), 7 E. & B. 399; *R.* v. *Edmonton* (1831), 1 M. & R. 24; *R.* v. *Hawkhurst* (1862), 26 J. P. 772; 7 L. T. 268; *Ferrand* v. *Milligan* (1845), 7 Q. B. 730; *R.* v. *Wicklow C. C.*, [1908] 2 I. R. 116; *Farquhar* v. *Newbury R. D. C.*, [1909] 1 Ch, 12; 73 J. P. 1).

A road may be none the less a highway, although not repairable by the public

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(*Roberts* v. *Hunt* (1850), 15 Q. B. 17), or indeed by anyone; and many roads dedicated since 1836, are, in fact, not repairable by anyone.

Before 1836 any road which was dedicated to the public and used by them became a highway repairable by the inhabitants at large (*R.* v. *Westmark* (1840), 2 Moo. & R. 305; *R.* v. *Dukinfield* (1863), 4 B. & S. 158; 27 J. P. 805, *per* BLACKBURN, J.; *Eyre* v. *New Forest Highway Board* (1892), 56 J. P. 517; 8 T. L. R. 648; *R.* v. *West Sussex C. C.* (1921), 85 J. P. 162; 19 L. G. R. 337). In that year, however, the Highway Act, 1835, came into operation, and s. 23 of that Act prescribes certain formalities which must be complied with before a landowner can dedicate a road so as to make it repairable by the public. A road which has been dedicated since 1836, but without the observance of the formalities prescribed by s. 23, and which has not become repairable by the public by virtue of one of the statutes mentioned *infra*, is not within s. 149, and the owners of adjoining property may be compelled to pave, etc., it under s. 150, *post*, p. 286. Some doubt has existed in the past as to whether s. 23 of the Highway Act, 1835, applied to a road not formally dedicated by the landowner. Thus, in *Healey* v. *Batley* (*Corporation of*) (1875), L. R. 19 Eq. 375; 39 J. P. 423, BACON, V.-C., held that s. 23 had no application to the case of a person who had not made the road at his own expense, who did not propose to dedicate the highway to the use of the public, and who did not intend, or undertake to make it, or to keep it in repair at his own expense for twelve months, in order at the end of that period to throw the future care and expense on the rates: see also *R.* v. *Thomas* (1857), 7 E. & B. 399; but it is now clear that it does apply where an owner allows the public to use a track over his land until it is no longer open to him to say that it is not a highway (*Eyre* v. *New Forest Highway Board, supra; Cababé* v. *Walton-upon-Thames U. D. C., infra; Shearburn* v. *Chertsey R. D. C.* (1914), 78 J. P 289; 12 L. G. R. 622; and *Att.-Gen.* v. *Sewell* (1919), 88 L. J. K. B. 425; 83 J. P. 92). As to the effect of the section where an occupation road is "awarded" on the line of an old footpath, see *Reynolds* v. *Barnes*, [1909] 2 Ch. 361; 73 J. P. 330, and *Fuller* v. *Chippenham R. D. C.* (1915), 79 J. P. 4. See *R.* v. *Dukinfield*, *supra*, as to what an urban authority may require under s. 23 when it is proposed to dedicate a new road in their district.

Highway Act, 1835, s. 23.

It will be seen from the foregoing remarks that in deciding whether some highway is or is not repairable by the inhabitants at large, the question whether it was in 1836 a highway, is often most material. In *Att.-Gen.* v. *Watford R. D. C.*, [1912] 1 Ch. 417; 76 J. P. 74, PARKER, J., thus summarised the law as to proof of liability. Upon an indictment of the inhabitants of a parish for non-repair, the Crown must prove that the way is within the parish, and is a public highway. Proof of user of such a nature that dedication may be reasonably inferred therefrom is sufficient without proving that during the period of user there was a person legally capable of dedicating. It is for the inhabitants to prove that there was no such person if they rely on that fact. The absence of evidence that the inhabitants have ever repaired the way, though relevant on the question whether the way is a public way or not, cannot by itself displace their liability to repair when once the way is found to be a public one. The Crown, at any rate before the Highway Act, 1835, need give no evidence of the liability of the inhabitants to repair. This was presumed at common law in the case of all public roads, though it could be displaced by proof on the part of the inhabitants that the liability rested on someone else *ratione tenuræ* or otherwise. The proper mode of regarding s. 23 of the Highway Act, 1835, is to regard it as having opened to the inhabitants a new method of displacing their common law liability, and not as having imposed on the Crown a new onus of proof. It is for the inhabitants to prove that the road in question is one to which the section applies; but if they do so, the onus of proving that the formalities required to make the inhabitants liable have been observed may be shifted to the Crown. See also *Att.-Gen.* v. *Godstone R. D. C.* (1912), 76 J. P. 188.

At some date subsequent to 1835 a way, which had previously been set out in an inclosure award as a private bridlepath, became a public highway, but there was no evidence to show at what precise date, or how, or under what circumstances it became such. In the absence of evidence that the conditions of s. 23 of the Highway Act, 1835, had been satisfied, it was held that the way was not repairable by the inhabitants at large (*Cababé* v. *Walton-on-Thames U. D. C.*, [1914] A. C. 102; 78 J. P. 129).

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In 1827, R., being tenant in tail with special statutory powers of setting out highways over the settled lands, made upon such lands a road, along which houses were erected on plots leased by him. There was no evidence that it was required for any purpose except the use of the occupiers, but from 1831 it was to some extent used by other persons. There was across the road a toll-house and gate where, from before 1836 to the present time, tolls for horses and vehicular traffic had been levied, but spaces were left on either side for foot passengers. Notice boards fixed the toll for horse and wheeled traffic, and prohibited the passage of motor cars, cattle and sheep, but did not prohibit the passage of foot passengers. There were also notice boards describing the road as a "private road." Before 1836 the road was not kept in proper repair, but since then it had been repaired by R. or his lessees, and had never been repaired by the local authority. There had been no formal dedication of the road as prescribed by s. 23 of the Highway Act, 1835. On proceedings under the Private Street Works Act, 1892, the justices found that it was not the intention of R. in 1827 or later to make and dedicate the road as a highway, that there was no dedication for either vehicles or foot passengers prior to 1836, and that since that date there had been no dedication as prescribed by s. 23. They therefore decided that no part of the road was a highway repairable by the inhabitants at large. The House of Lords held that their findings could not be disturbed (*Folkestone Corporation* v. *Brockman*, [1914] A. C. 338; 78 J. P. 273).

In a proper case it may be possible for the court to presume compliance with the statutory formalities (*Leigh-on-Sea U. D. C.* v. *King*, p. 293, *post*; but see as to this case, *Cababé* v. *Walton-on-Thames U. D. C.*, *ante*, p. 275).

Other statutory dedications.

Highways repairable by the inhabitants at large may also come into existence under ss. 146 and 148, *ante*, pp. 267, 269; s. 152, *post*, p. 319; s. 154, *post*, p. 321; ss. 19 and 20 of the Private Street Works Act, 1892; ss. 62, 85 and 93 of the Highway Act, 1835; ss. 35 and 36 of the Highway Act, 1862; ss. 24 and 48 (2) of the Highway Act, 1864; the Highways and Bridges Act, 1891; s. 12 (3) of the Housing of the Working Classes Act, 1890; under s. 6 and the planning provisions of the Housing, Town Planning, etc. Act, 1909, and under the Development and Road Improvement Funds Act, 1909.

Repair of "awarded" roads.

Many highways repairable by the inhabitants at large have become such under awards made in pursuance of Inclosure Acts. It does not follow, however, that every way set out by an award is in law repairable in manner directed by the award. See *R.* v. *Inhabitants of Cottingham* (1794), 6 T. R. 20, where it was held that commissioners appointed by a local Act, which enacted that the private roads set out by them should be repaired by such persons as they should award, had no power to impose on the parish at large the burden of repairing such private roads: see also *Att.-Gen. and Settle R. D. C.* v. *Lunesdale R. D. C.* (1902), 86 L. T. 822, where an award directed one authority, the predecessors of the defendants, to repair some highways in the district of another authority, predecessors of the plaintiffs. The court held that the defendants were not liable. See also *Att.-Gen.* v. *Tamworth R. D. C.* (1901), 85 L. T. 190. Cases have also occurred where the inhabitants have been held not to be liable to repair owing to awarded roads never having been formed and completed: see *R.* v. *Hatfield* (1835), 4 A. & E. 156; *R.* v. *Midville* (1843), 4 Q. B. 240; *R.* v. *East Hagbourne* (1859), 28 L. J. M. C. 71; *Cubitt* v. *Maxse* (1873), L. R. 8 C. P. 704; *R.* v. *French* (1879), 4 Q. B. D. 507. See also *Reynolds* v. *Barnes*, *supra*.

Repair of diverted roads.

With reference to the repair of a diverted road under the Highway Act, 1835, s. 92, see *Kingston Corporation* v. *Baverstock* (1910), 73 J. P. 378; 100 L. T. 935, where the result of diverting an ancient footpath along a new street was to make the whole width of the street repairable by the public.

Authority's duty to repair.

Section 144, p. 253, *ante*, imposes upon an authority the duty of repairing any highway which is repairable by the inhabitants at large.

It was held under the Metropolis Management Act, 1855, s. 96, that a metropolitan vestry were bound to repair the pavement over vaults and cellars, although by s. 102 of that Act, the vaults, etc., and the openings into them are to be repaired by the owners of them (*Hamilton* v. *St. George's, Hanover Square* (*Vestry of*) (1873), L. R. 9 Q. B. 42; 38 J. P. 405); *cf. Laing* v. *Paull and Williamson*, [1912] S. C. 196; see *Jones* v. *Rew*, cited on p. 263, *ante*, as to the liability to repair a "carriage plate" bridging the channel of a road, and see also *Horridge* v. *Makinson* cited on

p. 263, *ante*, as to the liability where an opening was left in the footpath for access to a coal shoot, and *M'Kibbin* v. *Glasgow Corporation*, [1920] S. C. 590, where the cover of a water hydrant had been removed and the authority were held liable for negligence upon an accident arising therefrom. **Note to Section 149.**

As to the meaning of the words "repairable by the inhabitants at large," see further the next section, note (*c*), *post*, p. 291.

(*d*) This section, unlike the five preceding sections, is not applied to rural districts by the L. G. A., 1894, s. 25. The result is that a rural district council who succeeded merely to the powers of surveyors of highways are unable, without urban powers under s. 149, to undertake such a work as the alteration of the level of a road. Rural districts.

The M. of H. hold that a rural district council with the limited powers which were given by the Highway Acts to surveyors of highways are not empowered to provide a highway depôt, but that if s. 149 of the P. H. A., 1875, be put in force by order under s. 276 it may be held that a depôt, or place for the storage of materials, etc. is a consequential necessity, and can be provided under that Act.

(*e*) The presumption is that any man in possession of a plot of land adjoining a highway is in possession of the soil of the highway *usque ad medium filum*. See the cases collected in *Mappin Brothers* v. *Liberty*, [1903] 1 Ch. 118; 67 J. P. 91 (where, however, the presumption was held to be rebutted), and *Central London Rail. Co.* v. *City of London Land Tax Commissioners*, [1913] A. C. 364; 77 J. P. 289; *Maclaren* v. *Att.-Gen. for Quebec*, [1914] A. C. 258. Ownership and statutory "vesting" of soil of streets.

The words in s. 149, *shall vest in*, are future in signification, but as a similar provision was contained in previous Public Health Acts, the effect of the words in question was merely to continue the state of things which at the time of the passing of the Act existed in districts already constituted. See s. 326, *post*. But while the property mentioned in the section passed to the authority, it must be remembered that all outstanding liabilities also passed. See s. 12, *ante*, p. 43.

As to the meaning of the words "vest in," see the following cases: In *Hinde* v. *Chorlton* (1866), L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* in a local Act, said: "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey* v. *Nelson* (1844), 12 M. & W. 535, it was provided by an Act that certain lands should be *vested in* the Commissioners of Sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold, passed to them." This decision was followed in a recent case (*Nesbitt* v. *Mablethorpe U. D. C.*, [1918] 2 K. B. 1; 82 J. P. 161), and the case of *West Norfolk Farmers' Manure Co.* v. *Archdale* (1886), 16 Q. B. D. 754; 50 J. P. 500, was distinguished. The *Mablethorpe Case* was a decision as to the ownership of sandhills and as to the acquisition of title by possession by the exercise of acts of ownership thereon. In *Bagshaw* v. *Buxton L. B.* (1875), 1 Ch. D., at p. 222, JESSEL, M.R., said that by the term *vested* he meant vested *sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street (*Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104; 43 J. P. 268). In that case, by an award made under an inclosure Act of 1766, two private roads, E. and H., were set out. About 1818 E. became a *public* highway. Down to 1863 the surveyor of highways for the parish had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish, and the board in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a *private* way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in*, as

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follows: "What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on, and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public" (*Rolls* v. *St. George the Martyr, Southwark* (*Vestry of*) (1880), 14 Ch. D. 785; 44 J. P. 680).

Where a street was carried across a railway in a cutting by a bridge erected under the Railways Clauses Consolidation Act, 1845, ss. 46—51, it was held that the statutory vesting of streets in the vestry did not give them any property in the bridge or its fences, but merely vested in them the carriageway and footpaths and the materials of which these were made (*G. E. Rail. Co.* v. *Hackney Board of Works*, *post*, p. 299). In *Sydney* (*Municipal Council of*) v. *Young*, [1898] A. C. 457, it was held that an authority's statutory property in a street did not entitle them to compensation when part of it was appropriated for the purpose of a street tramway. In *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317; 74 J. P. 41, it was held that an urban authority have a determinable statutory fee simple in such portion of the soil of a road as is vested in them at all, and the defendants were held liable as terre-tenants to pay a rent-charge created (as the court inferred) on the original acquisition of the site of the road by turnpike trustees.

In *Cavan C. C. and Bailieborough R. D. C.* v. *Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250, it was held that the plaintiff councils suing together could recover as "special damage," in respect of a public nuisance, the cost of repairing a highway cut up by the defendant's traction engine. *Cf. Louth U. D. C.* v. *West*, cited on p. 265, *ante*, *Kilkenny C. C.* v. *Hayden* (1911), 46 Ir. L. T. 95, and *Donegal C. C.* v. *Robinson* (1914), 48 Ir. L. T. 182. In *Wednesbury Corporation* v. *Lodge Holes Colliery Co., Ltd.*, [1907] 1 K. B. 78; 71 J. P. 73; [1908] A. C. 323; 72 J. P. 417, a highway vested in the plaintiffs subsided in consequence of the working of the defendants' coal mines. The plaintiffs raised the highway to its former level, and sought to recover the expenses of so doing from the defendants, who contended that they were only liable to pay the cost of making the highway as commodious to the public as it was before, without raising it to its former level. It was held by the Court of Appeal that the plaintiffs, acting bonâ fide in the interests of the public, were entitled to raise the highway to its former level, and to recover the cost of so doing from the defendants. The House of Lords, however, held that they were not necessarily entitled to raise the road to the old level regardless of cost; and that, as in the view of the court they had acted under the mistaken belief that they were bound or at least entitled to so restore it at the colliery company's expense, and, so thinking, had not considered whether it was reasonably necessary to do so in the interests of the public, they were not entitled to recover more than the cost of making the highway as commodious to the public, within reasonable limits, as it was before. See also as to the meaning of the word "vest," *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1906] 1 K. B. 294; 70 J. P. 240; [1907] A. C. 264; 71 J. P. 425.

Effect of statutory vesting on overhead wires, tunnels, pipes, etc.

The vesting of the streets in the urban authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, such wire being erected at a great height and causing no appreciable danger to the public or to the traffic in the street (*Wandsworth District Board of Works* v. *United Telephone Co.* (1884), 13 Q. B. D. 904; 48 J. P. 676). A road was constructed by turnpike trustees under a local Act of 1826. The site or part of the site of the road where the wires of an electric light company crossed it was in 1828 conveyed to the trustees in fee simple under the Turnpike Roads Act, 1822. The company carried across the road at a height of thirty-four feet two guide or supporting wires, intended to support a cable carrying a supply of electricity to the house of a customer. The

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road became vested in an urban sanitary authority under s. 149. It was held that the fact that originally the fee simple was conveyed to the trustees was no evidence that the soil *ad inferos* and the air *ad superos* were prior to or at the date of action brought, necessary for "street purposes" and so vested in the authority, and that the extent of the "area of user" is a question of fact; and that, so long as the company did not encroach upon that area, they were entitled to carry their wires across the street (*Finchley Electric Light Co.* v. *Finchley U. D. C.*, [1903] 1 Ch. 437; 67 J. P. 97). In *Postmaster-General* v. *Hutchings* [1916], 1 K. B. 774; 80 J. P. 246, it was held that the freeholder of land over which highways which had not been taken over by the local authority ran was not entitled to attach a condition requiring payment to his consent for the erection of telegraph wires over such highways. Where an authority contracted with an electric lighting company for the lighting of the district, an injunction was granted to restrain a defendant claiming to own the subsoil of half a road, from interfering with poles erected in the road and electric wires. It was held that the road being a street within the above section, the local board were entitled to more than the surface; they had an area of user necessary for the exercise of their statutory powers, *e.g.*, of lighting the district, and their contractors could justify under them (*Farcham L. B.* v. *Smith* (1891), 90 L. T. Jo. 467; and *cf. Escott* v. *Newport Corporation*, on p. 103, *ante*). As to the construction by the local authority of a urinal partly below the level of the street, see *Tunbridge Wells (Mayor, etc. of)* v. *Baird*, and *Westminster Corporation* v. *L. & N. W. Rail. Co.* (as to the metropolis), cited at length in the notes to s. 39, *ante*, p. 104. It was in the first of these cases held that this section does not vest the subsoil in the urban authority, and consequently that the urban authority could not excavate the soil and construct lavatories below the surface. See now, however, the P. H. A., 1907, s. 47, *post*. The statutory vesting of a road does not prevent the owner of the subsoil from tunnelling through it, provided that in an urban district the written consent of the local authority is first obtained (see s. 26, *ante*, p. 88) (*Mayor, etc. of Poplar* v. *Millwall Dock Co.* (1904), 68 J. P. 339; *cf. Walker U. D. C.* v. *Wigham Richardson & Co., Ltd.* (1901), 66 J. P. 152; 85 L. T. 579; *Cunliffe* v. *Whalley* (1851), 13 Beavan, 411; *Cattle* v. *Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453; 39 J. P. 791; *Schweder* v. *Worthing Gas Light and Coke Co.*, [1912] 1 Ch. 83; 76 J. P. 3); and it has been held that an urban authority could not authorise private persons to lay pipes for trade purposes in a street vested in them, though the pipes were in the macadam or made ground of the street (*Salt Union, Ltd.* v. *Harvey* (1897), 61 J. P. 375; 13 T. L. R. 297; and *cf. Goodson* v. *Richardson* (1874), L. R. 9 Ch. App. 221; 38 J. P. 436; *Wood* v. *Ealing Tenants, Ltd.*, [1907] 2 K. B. 390; 71 J. P. 456). See also, hereon, *Att.-Gen.* v. *Barker*, *infra*, and *Att.-Gen.* v. *Mayo C. C.*, *infra*. Where an electric lighting company had wrongfully, and without authority, broken the surface of a street, and laid pipes and wires beneath it, it was held that they were not guilty of a continuing trespass against the local authority by allowing the pipes and wires to remain beneath the surface, and a mandatory injunction to compel the removal of the pipes and wires was refused (*St. Mary, Battersea (Vestry of)* v. *County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474). If a right to open the street for repairing mains is claimed, the local authority may obtain an injunction. See *Hyde (Mayor, etc. of)* v. *Oldham, etc. Electric Tramway Co., Ltd.* (1900), 64 J. P. 596; 16 T. L. R. 492. A suit by a telephone company against a local authority to recover damages for cutting down and removing telephone wires stretched across a public street, the claim being based on an alleged statutory right, failed on the ground that the company was not authorised by statute so to place their wires (*National Telephone Co.* v. *St. Peter Port (Constables of)*, [1900] A. C. 317).

Presumably the "vesting" of a street extends to the entire highway which the public have the right to use, which, primâ facie, includes not only the *via trita* but the entire space between the fences; see as to the width of highways, *R.* v. *United Kingdom Telegraph Co.* (1862), 2 B. & S. 647, and cases cited therewith in notes to the L. G. A., 1888, s. 11 (1), *post*.

An authority who erect in a highway, though vested in them, a stand to view a procession are liable as for a nuisance to a householder whose view is obstructed (*Campbell* v. *Paddington Borough Council*, [1911] 1 K. B. 869; 75 J. P. 277).

Vesting of "main roads."

As to how much of a main road vests in a county council under the L. G. A., 1888, s. 11, see *Curtis* v. *Kesteven C. C.* (1890), 45 Ch. D. 504. And see *Att.-Gen.* v. *Barker* (1900), 83 L. T. 245, where FARWELL, J., said: "In my opinion Parliament has vested the soil of the roads in them (the county council) *quâ* roads, and simply

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to the extent necessary for the purpose of preserving and maintaining and using them as roads." The Irish courts have held that a county council cannot legally sanction the erection of a permanent structure not authorised by the necessities of the public service along or upon a county road (*Att.-Gen.* v. *Mayo C. C.*, [1902] 1 I. R. 13), and in *Att.-Gen.* v. *Barker*, *supra*, it was held that a tramway laid across a county road by persons acting without statutory powers, and found to be a nuisance, was unlawful even though (as was assumed) it had been laid and continued under the licence of the county council. *Cf. Matson* v. *Baird & Co.* (1878), 3 App. Cas. 1082; 39 L. T. 304. Notwithstanding the text, a main road in an urban district is vested in the county council, unless the urban authority have elected to retain the control of main roads in their district. See the L. G. A., 1888, s. 11 (6), *post*.

Minerals beneath "vested" roads.

By the Highways and Locomotives (Amendment) Act, 1878, s. 27 (in App. I., *post*, Vol II.), notwithstanding anything contained in the P. H. A., 1848, s. 68, or in the P. H. A., 1875, s. 149, all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway. This section extends to the Isle of Wight and South Wales. As to the rights of the local authority under the latter part of this section, see *Att.-Gen.* v. *Conduit Colliery Co.*, [1895] 1 Q. B. 301; 59 J. P. 70; *Wednesbury Corporation* v. *Lodge Holes Colliery Co.*, *ante*, p. 278.

Divestment, if highway stopped up or diverted.

A plaintiff having, with leave of the Metropolitan Board of Works, made a new street over his land, on which were two old streets, N. and A., orders were made at quarter sessions for stopping up part of N. street as unnecessary, and for diverting a part of A. street and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N. nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal that under the Metropolis Management Act, 1855, s. 96, all streets being, for the time being, highways, were vested in the vestry, but only so long as they were highways; and that when they ceased to be highways by being legally stopped up or diverted, the interest of the vestry determined. It was therefore held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate (under the Highway Act, 1835, s. 91) that the substituted street had been completed and put into good condition and repair (*Rolls* v. *St. George the Martyr, Southwark*, p. 278, *ante*). See also the observations of Lord HERSCHELL on *Coverdale* v. *Charlton* in *Tunbridge Wells (Mayor, etc. of)* v. *Baird*, *ante*, p. 104.

It was held that a rent-charge issuing from lands adjoining certain roads, and granted at a time when such roads were private in return for the use thereof and of a sewer, was not determined by the roads becoming highways repairable by the inhabitants at large and the sewer becoming vested in and discontinued by the local authority; and that it was immaterial that the grantee of the rent-charge had covenanted to keep the roads and sewer in repair (*Merrett* v. *Bridges* (1883), 47 J. P. 775).

The duty to repair, its enforcement and extent.

(*f*) This section is imperative as to keeping in repair. Section 299 does not apply to default of this character; but as by s. 144, *ante*, p. 253, the urban authority are the highway authority within their district, proceedings to compel repairs may be taken under the Highway Acts. See also the L. G. A., 1894, s. 16, as to default of a rural council in such a matter.

The duty to repair a highway entails as a general rule an obligation to keep it in such repair as to be reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year (*R.* v. *High Halden* (1859), 1 F. & F. 678, *per* BLACKBURN, J.; *Mildred* v. *Weaver* (1862), 3 F. & F. 30, *per* ERLE, C.J.; *Burgess* v. *Northwich L. B.* (1880), 6 Q. B. D. 264; 45 J. P. 256, *per* LINDLEY, J.; *R.* v. *Henley* (1847), 2 Cox C. C. 334). An authority ought to alter the standard of a road from time to time as the ordinary traffic upon it increases or alters (*Chichester Corporation* v. *Foster*,

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[1906] 1 K. B. 167; 70 J. P. 73; *Kilkenny C. C.* v. *Hayden* (1911), 46 Ir. L. T. 95; *Donegal C. C.* v. *Robinson* (1914), 48 Ir. L. T. 182; *Sharpness New Docks, etc. Co.* v. *Att.-Gen.*, *Att.-Gen.* v. *G. N. Rail. Co.*, p. 272, *ante*). But, as against the owner of the soil, the mere common law powers of surveyors of highways do not justify an authority in converting a path into one of a totally different kind (*e.g.*, by making cuttings and bridges), under the guise of repairing it (*Radcliffe* v. *Marsden U. D. C.* (1908), 72 J. P. 475). The mode of repairing within legal limits is in the discretion of the authority (*R.* v. *Claxby* (1855), 24 L. J. Q. B. 223; *Att.-Gen.* v. *Staffordshire C. C.*, [1905] 1 Ch. 336; 69 J. P. 97; *R.* v. *Wilts and Berks Canal Co.*, [1912] 3 K. B. 623; *R.* v. *Clare C. C.*, [1904] 2 I. R. 529). The court refused to quash resolutions of a corporation for the payment of money for paving a road with tarmac, the corporation having bonâ fide arrived at the conclusion that the work would improve the highway for use by the inhabitants of, and visitors to, the borough, although the immediate occasion for the work was a projected meeting of the Automobile Club for motor car speed trials (*R.* v. *Brighton Corporation, Ex parte Shoesmith* (1907), 71 J. P. 265; 96 L. T. 762).

The obligation imposed by s. 149 to repair streets repairable by the inhabitants was held not to impliedly repeal a section of a local Act under which an authority might call upon the frontagers of any street (whether so repairable or not) which was not completed to their satisfaction to complete it, and upon default of the frontagers might do the work and recover the expense from them (*Ashton-under-Lyne* (*Corporation of*) v. *Pugh*, and other cases cited therewith, on p. 291, *post*).

There is in this Act no section like s. 53 of the Towns Improvement Clauses Act, 1847, which (where in force) enables an authority to charge on frontagers the cost of making good any public highway, even though repairable by the inhabitants, if it has never previously been made good. See as to it, *R.* v. *G. W. Rail. Co.* (1859), 28 L. J. M. C. 246; *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364; 49 J. P. 676; *Crump* v. *Chorley Corporation* (1908), 72 J. P. 334; 98 L. T. 805.

Raising, lowering, or altering streets.

(*g*) *Boulton* v. *Crowther* (1824), 2 B. & C. 703, established the principle that where a public body have conferred upon them by statute power to execute works for the public good, they are not liable to be sued in respect of damage which they cause to private individuals in the due and careful exercise of those powers. It was decided with reference to the Turnpike Roads Act, 1822, s. 83, which authorised the trustees to divert, shorten, alter, or improve the course or path of any of the roads under their management, and to divert, etc. any roads through or over any private lands, tendering or making satisfaction to the owners thereof and persons interested therein for the damage sustained thereby. It was held that under this clause the trustees were authorised to lower hills and raise hollows, and were not liable to an action for consequental injury resulting from their altering the level of the road opposite the entrance to certain premises. Where a local Act empowered a council to alter the level of any street, it was held that they had not exceeded their powers by erecting a bridge in the line of a street over a canal (*Beaver* v. *Mayor, etc. of Manchester* (1857), 8 El. & Bl. 44). In another case where an action was brought against a local board for lowering a highway and thereby obstructing the access to a house, the court held that the plaintiff had no right of action (*Bold* v. *Williams* (1857), 21 J. P. 84). In *Wedmore* v. *Bristol* (1862), 7 L. T. 459, an injunction to restrain the raising of a footway was refused though damage was shown, there being statutory power to alter the level of the footpath.

No action lies in respect of authorised works properly executed.

A highway, forming one of the approaches to a bridge, subsided by reason of pumping operations. The roadway over the bridge was vested in the county council, who resolved to raise the highway to its original level. A frontager sought to restrain the raising of the highway so as to interfere with the access to his premises, but the injunction was refused (*Atherton* v. *Cheshire C. C.* (1895), 60 J. P. 6).

A district board in the metropolis was held entitled to lower the surface of a street without making a corresponding alteration in the position of water-pipes in the street (*Southwark and Vauxhall Water Co.* v. *Wandsworth District Board*, [1898] 2 Ch. 603; 62 J. P. 756). And see *Ferrár* v. *Commissioners of Sewers* (1869), L. R. 4 Ex. 227; *East Freemantle* (*Mayor of*) v. *Annois*, [1902] A. C. 213; *Ash* v. *Great Northern, Piccadilly, etc. Rail. Co.* (1903), 67 J. P. 417; 19 T. L. R. 639.

But an authority would not be permitted to so alter the level of a street as to cause unnecessary damage, for (although there may be a compensation section in a

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statute) a private individual is not restricted to his right to compensation if the authority exercise their statutory powers unreasonably (*Roberts* v. *Charing Cross, Euston and Hampstead Rail. Co.* (1903), 87 L. T. 732; 19 T. L. R. 160). A local board in repairing and improving a road raised a footpath by its side a few inches, and the effect was to prevent water which fell upon the space between a warehouse of the plaintiff, in which needles were stored, and the road from draining into the road. On bill filed by the plaintiff, it was held that the board had no right to make improvements in a way calculated to cause unnecessary damage to him, that the evil complained of was one of easy remedy, and that the case was not one for pecuniary compensation; a mandatory injunction was granted to prevent the board from allowing such water to remain dammed up to the injury of the plaintiff (*Milward* v. *Redditch L. B.* (1873), 21 W. R. 429.) And see *Shill* v. *Gloucestershire C. C.*, (1893), Times, October 30th, and *Rochford* v. *Essex C. C.* (1916), 85 L. J. Ch. 281; 14 L. G. R. 33.

A line of kerbing ran across a street above the plaintiffs' premises and guided surface water flowing out of a cross road to the plaintiffs' side of the street, and so past their premises. The authority substituted a retaining wall for the kerbing. Owing to the wrongful act of third parties on land over which the authority had no control, an unusual flow of water ran down the road and did damage to the plaintiffs' premises. It was held that the authority were not liable; the damage was occasioned by the unexpected flow of water for which they were not responsible, and they were not negligent in not so building the wall that it could not divert towards the plaintiffs' premises a flow which they had no reason to foresee (*Ely Brewery Co.* v. *Pontypridd U. D. C.* (1903), 68 J. P. 3; 2 L. G. R. 40).

Compensation provided for under this Act.

Section 308 of this Act provides, however, for the payment of compensation for injuries sustained by persons in consequence of the exercise of the powers conferred by this Act. Therefore, where an authority executed works under s. 150, *post*, p. 286, and in so doing altered the level of the street so as to make the access to one of the houses in the street difficult and dangerous, it was held that though the owner of the house was liable to pay his proportion of the expenses, he was nevertheless entitled to compensation under the P. H. A., 1848, s. 144 (corresponding to s. 308, *post*), for the special damage he had sustained in order that his neighbours and the district generally might be benefited (*R.* v. *Wallasey L. B.* (1869), L. R. 4 Q. B. 351; 33 J. P. 677). Abutting upon a highway the plaintiff had land on which an inn and stabling had been erected. These stood back from the highway, and in front of them was an open space forming part of the same land, which had been left open to and on a level with the highway. The defendants in exercise of their powers under this section, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's premises. It was held that he was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct his remedy for any injury caused by the kerbstones would be by compensation under s. 308 (*Sellors* v. *Matlock Bath L. B.* (1885), 14 Q. B. D. 928).

The footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees (see s. 148, *ante*, p. 269), so as to raise the level of the footpath in front of the plaintiff's house and cause him damage. It was held by BRETT and COTTON, L.JJ., reversing the judgment of the Queen's Bench Division (BRAMWELL, L.J., *diss.*), that a street which was also a turnpike road was not excluded by the definition (see s. 4, *ante*, p. 15), from the operation of the P. H. A., 1848, s. 68 (corresponding to this section), and that the plaintiff was therefore entitled to compensation under s. 144 of that Act (*Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375; 43 J. P. 635; affirmed in H. L. (1880), 43 L. T. 710; see also as to a turnpike road being a street, *Thomas* v. *Roberts* (1878), 43 J. P. 574). In the *Accrington Case* the majority of the court assumed that the alteration had been done in pursuance of the P. H. A., 1848, s. 68, corresponding to this section. But in the judgment of BRAMWELL, L.J., it was pointed out that had the act complained of been done by the turnpike trustees, no action would have lain against them on the principle established in *Boulton* v. *Crowther*, *supra*. "And," he continued, "usually, a person cannot raise or lower a road in front of another man's park gate, and so leave his park gate high up in the air, or below the level of the road, because any person having the right is not likely

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to interfere with the level of the road. But supposing that the owner of property adjoining a highway is not the owner of the soil in the highway, I do not think he has any right by the law of the land to have the road continued at a particular level. It may be a great inconvenience to him, no doubt, to have the road altered if he has built with reference to the level of the road; but it may be an inconvenience to the public not to have the road altered, and I do not know that he has any vested right in the road remaining at that level to the inconvenience of all mankind." In every case, therefore, where compensation is claimed it becomes material to consider whether the act causing the injury has been done pursuant to this section, or whether it is such an act as might be justified by the board under their general powers as surveyors of highways. See upon this question, *Taylor* v. *Meltham L. B.*, and cases cited therewith, on p. 266, *ante*; *Burgess* v. *Northwich L. B.*, and *Pearsall* v. *Brierley Hill L. B.*, *ante*, p. 264; *Douglass* v. *Rhyl U. D. C.*, [1913] 2 Ch. 407; 77 J. P. 373, and *Rochford* v. *Essex C. C.* (1916), 85 L. J. Ch. 281; 14 L. G. R. 33.

An authority were empowered by a local Act to acquire a bridge with the approaches thereto, with power to "alter," etc. the bridge and the approaches thereto, and for that purpose to acquire land by agreement under and subject to the provisions of the P. H. A., 1875. The approaches to the bridge were a highway. A. was the owner of a house bordering on and having a door giving access to the highway. The authority, without agreeing with A., proceeded to alter the highway and construct other works, so as to block the access to A.'s house and otherwise to interfere with her premises. A. brought an action to restrain the authority from continuing their operations. The authority alleged that A.'s only remedy was compensation under the P. H. A., 1875, s. 308. It was held that this was so, and that no action lay (*Arnott* v. *Whitby U. D. C.* (1909), 73 J. P. 64, 369; 101 L. T. 14).

Decisions upon points arising under local Acts.

Section 55 of a local improvement Act empowered commissioners to pave in a sufficient manner, on default of the owners or occupiers for six months after notice requiring them to do so, "the public streets, ways, and passages within the said township which are now built upon, but not made, paved, flagged, cleansed, or otherwise put into good order and condition, and all such other streets, etc., which are now making or being built upon or may hereafter be made, laid out, or built upon, or such thereof respectively as may require the same." Section 56 empowered the commissioners, after such streets should have been completed as to paving, etc., and the owners should have paid the expenses, to declare them highways. Section 53 empowered and required the commissioners to cause the present and future streets to be paved, etc., and the ground or soil thereof to be raised, lowered, or altered from time to time in such manner and with such materials as the commissioners should think fit. Section 54 enabled the commissioners to declare new streets to be highways, provided they were of certain width. The Act did not contain a clause giving compensation for damages occasioned by the exercise of the powers conferred by s. 53. It was held that the general powers conferred by s. 53 were to be exercised for the repair only of pavements in old streets and streets declared to be highways under the Act; that they were inconsistent with the specific powers conferred by ss. 55. 56; and that the lowering of the ground or soil of the streets described in ss. 55, 56 was an act of trespass not to be justified under s. 53 (*Brown* v. *Clegg* (1851), 16 Q. B. 681; 15 J. P. 609).

By s. 15 of a local Act, the local board were directed to cause offensive ditches to be cleansed, covered, or filled up; and s. 16 empowered them to cause the ditches at the sides of or across public roads to be filled up, and to substitute pipe and other drains, and from time to time to amend the same; and the surface of the land gained by filling up such ditches might, if the board thought fit, be thrown into the roads and ways, and be repairable as part thereof. The plaintiff was owner of a close adjoining a public highway, and between the close and the highway was a strip of land averaging nine feet in width. Upon the strip of land ran a ditch, the bank of which, on the plaintiff's side, was three feet in width, and covered with grass, and the bank on the roadside was one foot in width, and covered with grass. At the side of the road were posts and rails above two feet high. The plaintiff and his predecessors had usually repaired the posts and rails, but on two or three occasions the surveyors of the highways and the local board had repaired them without the plaintiff's knowledge. The board having removed the posts and rails, and covered the ditch, it was held that they had no power to do so, the ditch not being "at the

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side of a public road" within s. 16, and presumably belonging to the plaintiff as owner of the adjoining land (*Tutil* v. *West Ham L. B.* (1873), L. R. 8 C. P. 447; 37 J. P. 455. *Cf. Chorley Corporation* v. *Nightingale*, [1906] 2 K. B. 612; 70 J. P. 500, and *Walmsley* v. *Featherstone U. D. C.* (1909), 73 J. P. 322; 7 L. G. R. 806, for decisions as to whether roadside ditches, piped and filled up, formed part of the highway or not).

A public body, with statutory powers to stop up, alter, or use for the purpose of the authorised works, certain specified streets, were restrained by injunction from interfering, in excess of their powers, with the cellar of a house in one of the streets, the roadway in which was being lowered, until the amount of compensation for the whole house should have been ascertained and paid. An inquiry as to the damages sustained by the plaintiff, the owner and the occupier of the house, by reason of the works commenced by the defendants, having been directed by the decree, it was held that the plaintiff was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorised act of lowering the roadway, but only for direct structural injury occasioned by the unauthorised interference with his cellar (*Bigg* v. *Corporation of London* (1873), L. R. 15 Eq. 376; 37 J. P. 564).

Fencing highways.

(*h*) The owners of land adjoining a highway are not in general bound to fence it from the highway. Where a sewer belonging to the metropolitan commissioners adjoined a highway, it was held that they were not liable for an accident caused by its being unfenced (*Cornwell* v. *Metropolitan Commissioners of Sewers* (1855), 19 J. P. 313; 10 Ex. 771). And where a fence has been erected, there is no liability in respect of it, unless it is a nuisance (*Gibson* v. *Plumstead Burial Board* (1897), 13 T. L. R. 273; *Harrold* v. *Watney*, [1898] 2 Q. B. 320; see *Barker* v. *Herbert* and *Smith* v. *Keys*, on p. 167, *ante*, as to a defective area railing), and see *Horridge* v. *Makinson*, cited on p. 263, *ante*, as to the liability for an opening left in the pavement of a footpath to admit of access to a coal shoot. A duty is, however, cast upon those who in the exercise of statutory powers divert a public footpath, to protect, by fencing or otherwise, reasonably careful passengers from injury through going astray at the point of diversion (*Hurst* v. *Taylor* (1885), 14 Q. B. D. 918; 49 J. P. 359). A local Act provided, that if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of any such land should, when required by the corporation, and to their satisfaction, fence off the land from the street, and should afterwards keep such fence in repair. It was held that the Act did not apply to the retaining walls of an old turnpike road, but applied only to new streets where there were no fences, and which, in the opinion of the corporation, were dangerous to the public (*Rotherham (Mayor, etc. of)* v. *Fullerton* (1884), 50 L. T. 364). See, now, as to dangerous places adjoining highways, and as to fencing lands adjoining streets, the P. H. A., 1907, ss. 30, 31, *post*, and see also the Towns Improvement Clauses Act, 1847, s. 83, in App. I., *post*, Vol. II.

The provision in s. 149, *ante*, p. 273, is permissive, and no compulsion or duty is cast upon the urban authority. Therefore, where a goit ran by the side of an ancient public footpath, it was held that the local board were not bound to fence the path from the goit to prevent accidents (*Wilson* v. *Halifax (Mayor, etc. of)* (1868), L. R. 3 Ex. 114; 32 J. P. 230). But if a council pull down a fence placed to protect passengers from falling into a ditch by the side of a road, in order to repair it, and before repairs are executed an accident occurs through want of a fence, they will be liable as for misfeasance (*Whyler* v. *Bingham R. D. C.*, *ante*, p. 258).

Breaking open highways.

(*i*) In general no person or company may take up or interfere with a highway so as to create a nuisance. See *R.* v. *Longton Gas Co.* (1860), 29 L. J. M. C. 118; 24 J. P. 214; *Ellis* v. *Sheffield Gas Consumers' Co.* (1853), 2 El. & Bl. 767; *Pudsey Coal Gas Co.* v. *Bradford* (*Mayor of*) (1873), L. R. 15 Eq. 167; 37 J. P. 340; *Stockport Waterworks Co.* v. *Manchester Corporation* (1863), 9 Jur. (N.S.) 266; *Att.-Gen.* v. *Wheatley & Co.*, Times, December 16th, 1903; *Att.-Gen.* v. *Scott*, [1904] 1 K. B. 404; 68 J. P. 137; *Cavan C. C.* v. *Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250; *Kilkenny C. C.* v. *Hayden* (1913), 46 Ir. L. T. 95. In *Stockport Waterworks Co.* v. *Manchester Corporation*, *supra*, it was held that the taking up of the pavement and digging trenches in the roadway and footway of a public thoroughfare, in order to lay down

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service pipes for the supply of gas from mains to private houses, are not acts which can be justified at common law as done in the exercise of the right of every occupier of a house to make such a temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property; and a householder who authorises such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. No lapse of time is an answer to an indictment for causing a nuisance on a highway (*R.* v. *Cross* (1812), 3 Camp. 224; *R.* v. *Edwards* (1847), 11 J. P. 602; *Harvey* v. *Truro R. D. C.* (1903), 68 J. P. 51; 52 W. R. 262). Nor is the consent of a local authority under this section an answer to an indictment, for the power to consent is limited to works authorised by the Act (*Hawkins* v. *Robinson* (1873), 37 J. P. 662; see also *Harvey* v. *Truro R. D. C.*, *supra*; *Att.-Gen.* v. *Mayo C. C.*, [1902] 1 I. R. 13; *Preston* (*Mayor of*) v. *Fulwood L. B.*, *infra*). The consent of a highway authority to a tramway crossing a highway is of no effect, at any rate if the crossing is a nuisance (*Att.-Gen.* v. *Barker* (1900), 83 L. T. 245), and *cf. Matson* v. *Baird & Co.*, (1878) 3 App. Cas. 1082; 39 L. T. 304.

The Court of Chancery refused to interfere by injunction where the injury done by the opening of streets was temporary and trivial (*Att.-Gen.* v. *Sheffield Gas Consumers' Co.* (1853), 22 L. J. Ch. 811; *Att.-Gen.* v. *Cambridge Consumers' Gas Co.* (1868), L. R. 4 Ch. 71; 33 J. P. 147); and see further as to nuisances of a trivial or negligible character, *R.* v. *Lepine* (1866), 15 L. T. 158; *R.* v. *Tindall* (1837), 6 A. & E. 143; *R.* v. *Betts* (1850), 16 Q. B. 1022; *R.* v. *Russell* (1854), 3 E. & B. 942; *Att.-Gen.* v. *Mayo C. C.*, *supra*; *R.* v. *Bartholomew*, [1908] 1 K. B. 554; 72 J. P. 79 (coffee stall in street); *R.* v. *Richmond JJ.* (1860), 25 J. P. 340 (trestles to divert traffic); *Wandsworth Board of Works* v. *L. & S. W. Rail Co.* (1862), 31 L. J. Ch. 854.

An injunction was, however, granted under the following circumstances: The corporation of P., who had no parliamentary powers for the purpose, supplied water to the adjoining district of F., and claimed the right to enter upon and break up the streets of F., whenever occasion should require, for the purpose of repairing their pipes, relying, as regarded some of the streets, on alleged irrevocable licences granted by the predecessors of the local board of F. (*i.e.*, the surveyors of highways), and as regarded other streets on prescription. It was held (1) that the claim of the corporation was to commit a nuisance; (2) that it was not in the power of the surveyors of highways to grant the alleged licences; (3) that, therefore, as a grant could not be presumed, the corporation could not obtain the right claimed by prescription (*Preston* (*Mayor, etc. of*) v. *Fulwood L. B.* (1885), 53 L. T. 718). See this case for an explanation of the decision in *Edgware Highway Board* v. *Harrow District Gas Co.* (1874), L. R. 10 Q. B. 92; 38 J. P. 806. There the plaintiffs, a highway board, agreed with the defendants, a gas company, that if the plaintiffs would give the defendants a licence to open a highway in their jurisdiction, the defendants should make good the surface of the road, and pay to the plaintiffs 1*s.* per yard of the highway so broken up. It was held that the contract was valid, for the agreement of the plaintiffs to allow the defendants to interfere with the surface of the road was a good consideration, and the contract was not illegal, as it did not necessarily contemplate the creation of a nuisance by the defendants. See also on this point *Dublin C. C.* v. *P. M. G.*, [1914] 2 I. R. 208.

As to the right of a private individual to restrain the laying of pipes in a highway the soil of which belongs to him, see *Goodson* v. *Richardson* (1874), L. R. 9 Ch. 221; 38 J. P. 436, and *Salt Union, Ltd.* v. *Harvey* (1897), 61 J. P. 375; 13 T. L. R. 297. The right of a local authority to prevent the laying of pipes, etc. under a street does not enable them to require the taking up of such pipes, etc. once they have been laid, though laid wrongfully (see *St. Mary, Battersea* (*Vestry of*) v. *County of London and Brush Provincial Electric Lighting Co., Ltd.*, *ante*, p. 279). It would be otherwise if the defendants claimed the right to open the streets from time to time for repairs, etc. (see *Hyde* (*Mayor, etc. of*) v. *Oldham, etc. Electric Tramway, Ltd.* (1900), 64 J. P. 596).

Where a company has a special Act, passed before this Act, the provisions in the text will not affect their powers. In *London and Blackwall Rail. Co.* v. *Limehouse District Board of Works* (1856), 26 L. J. Ch. 164; 20 J. P. 789, the general principle was laid down that when the legislature has vested special powers in a particular body for specified purposes, a subsequent general Act will not override those special

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powers. Therefore, in that case, a railway company were held empowered to build a station abutting on a street in the metropolis without the consent of the district board, their local Act, which preceded the Metropolis Management Act, empowering them to do so. See also *Goldson* v. *Buck* (1812), 15 East, 372; *Att.-Gen.* v. *Eastern Counties Rail. Co.* (1842), 10 M. & W. 263; *City and South London Rail. Co.* v. *London C. C.*, [1891] 2 Q. B. 513; 56 J. P. 6; *London C. C.* v. *London School Board*, [1892] 2 Q. B. 606; 56 J. P. 791; *Uckfield R. D. C.* v. *Crowborough Water Co.*, [1899] 2 Q. B. 664; *Moran* v. *Marsland*, [1909] 1 K. B. 744; 73 J. P. 114; *Metropolitan Rail. Co.* v. *London C. C.*, [1913] 2 K. B. 249. For an instance of a power under a special Act to break up pavements to lay gas pipes, see *Dover Gas Light Co.* v. *Mayor, etc. of Dover* (1855), 1 Jur. (N.S.) 812.

As to the power to open streets for the purposes of laying mains or wires for the transmission of electricity, see the Electric Lighting Acts, in App. I., *post*, and *Montreal (City of)* v. *Standard Light and Power Co.*, [1897] A. C. 527. As to the power to open streets for the purpose of laying drains, see *Att.-Gen.* v. *Ashby*, *ante*, p. 79. As to crossings over footways, see the P. H. A., 1907, s. 18, *post*. Reference may also be made to the Tramways Act, 1870.

See ss. 153 and 331, *post*, as to certain acts of interference with pipes, etc. authorised by this Act.

Trees in streets.

(*k*) The judgment of BRAMWELL, L.J., in *Coverdale* v. *Charlton*, *ante*, p. 277, leaves open the question whether a tree in a street vests in a local authority under this section, though they have power by inference to trim and maintain existing trees on highways. See also *Surbiton Improvement Commissioners* v. *Metcalf* (1888), Times, Nov. 14th. In the same judgment reference is made to trees planted by the local board, but it must not be assumed that an authority have power under this section to plant trees in streets. See a conviction for so doing in *R.* v. *Lewes Corporation* (1886), Times, March 9th. The planting of trees on or near highways was discouraged by the old Highway Acts, but where the P. H. A., 1890, *post*, has been adopted, the authority may plant trees (s. 43), and may place in any street refuges and cabmen's shelters; and they may also authorise the erection of statues or monuments (ss. 39, 40, 42).

The liability of the owner of a tree for damage done by an overhanging bough to a passing vehicle was discussed by a county court judge in *Thorne* v. *Roberts* (1909), L. T. Jo., Dec. 18th.

(*l*) As to the recovery of this penalty, see s. 251, *post*.

Power to compel paving, etc. of private streets (*a*).

150. Where any street (*b*) within any urban (*a*) district (not being a highway repairable by the inhabitants at large) (*c*) or the carriageway footway or any other part of such street (*d*) is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction (*e*) of the urban authority, such authority may, by notice addressed to the respective owners or occupiers (*f*) of the premises fronting adjoining or abutting (*g*) on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting (*h*) the same within a time (*hh*) to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all

reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice (*i*). Section 150.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein (*k*); and may recover in a summary manner (*l*) the expenses (*ll*) incurred by them in so doing from the owners, in default (*m*), according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority (*n*), or (in case of dispute) by arbitration in manner provided by this Act (*o*); or the urban authority may by order declare the expenses so incurred to be private improvement expenses (*p*).

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large (*q*).

(*a*) This section will not apply to a district in which the Private Street Works Act, 1892, has been adopted. See that Act, s. 25, *post*.

Under the P. H. A., 1907, *post*, a district council in whose district s. 19 of that Act has been put in force, may, without "making up" the whole street, require owners to execute any repairs necessary to obviate or remove danger to passengers or vehicles. See that section and notes thereto, *post*.

See also s. 28 of the same Act as to the removal or use of old materials in streets.

Rural districts.

It will be observed that the section is only applied by the Act to urban districts, but if a rural district council desire to act thereunder they may apply to the M. of H. for an order under s. 276 putting the section in force. Orders of this kind are frequently issued, but it is the practice of the Ministry following that of the L. G. B. not to grant the powers in respect of whole rural districts or parishes, or (in view of the duties imposed upon district councils by ss. 15 and 229 of the Act to provide such sewers as are necessary for effectually draining their district at the cost of the respective contributory places) to give to rural district councils the power of requiring frontagers to defray the cost of sewers in private streets. In several cases the Ministry have relaxed their rule when it has been shown that a rural parish has in fact an urban character and has been provided with a main drainage system, or that other circumstances make it just that frontagers should provide sewers. Applications should, normally, be limited to streets or parts of streets in which all necessary sewers have already been laid (so as to avoid a second breaking up), and the Ministry should be furnished (for the purposes of the order if issued) with a statement giving their names, length and termini, and the names of the contributory places in which they are situate. A map or maps should also be forwarded, showing by colour the streets included in the application, the position of the sewers to which the properties are drained, and the extent to which the abutting lands are built upon. The Ministry require before issuing an order that the rural district council should give some evidence in the shape of a declaration by their clerk that the streets are not highways repairable by the inhabitants at large, and should formally undertake by resolution to adopt the streets, when made up, as highways so repairable. The application must, therefore, extend to the powers of s. 152 or s. 41 of the P. H. A., 1890. If a rural district council prefer to proceed under the Private Street Works Act, 1892, they may apply for the necessary order under s. 4 of that Act. The practice of the Ministry is similar in the two cases, except that in view of s. 20 of the later Act the Board do not require a rural district council, proposing to proceed thereunder, to pass a resolution undertaking to adopt the streets as public highways. If an application relates to streets which have no sewers and are not considered to require them, a full statement of grounds will be required, and it is

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advantageous to support the application by a report by the medical officer of health as to the existing means of drainage.

"Street."

(*b*) **Street.**—In discussing the definition of this term in s. 4, *ante*, p. 15, it was pointed out that the word "street," as used in this section, does not apply only to a street in the ordinary and popular sense, but has the wider meaning assigned to it by the interpretation clause. The decisions have not been uniformly to this effect, and it may be useful to set them out in chronological order. In *Maude* v. *Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644, the court held that the word "street" in this section was used in its ordinary sense of a road with houses more or less continuous. In *Portsmouth* (*Mayor, etc. of*) v. *Smith* (1883), 13 Q. B. D. 184; 48 J. P. 404, the MASTER OF THE ROLLS questioned that decision, pointing out that it had proceeded upon a mistaken view of *R.* v. *Dayman* (1857), 22 J. P. 39; 7 El. & Bl. 672; and the court decided that the word "street," as used in the Towns Improvement Clauses Act, 1847, s. 53 (which corresponds to the text), was to be interpreted according to the definition, and, therefore, includes a highway which was not a street in the ordinary sense. In *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405, it seems to have been assumed that the word "street" as used in the text meant a street as defined by s. 4. But in *Cleckheaton L. B.* v. *Burnup* (1886), 50 J. P. 598, the court held that the section applied only to streets in the ordinary and natural meaning of that term; that in summary proceedings under the section, it was for the justices to find as a fact, having regard to the surrounding circumstances, and to whether there was any intention of building along a road so as to convert it into a street, whether such road was a street in the ordinary and popular sense of the term; that it made no difference that the section had been applied, or might apply, to a portion of the road other than that in question; and that where the justices found a road, or a portion of a road, not to be a street in the ordinary and popular sense, they would be right in holding that the section was not applicable to the road or portion. All these cases were reviewed in *Jowett* v. *Idle L. B.* (1887), 57 L. T. 928; affirmed (1888), 36 W. R. 530. In that case the plaintiffs were owners of a private alley or court, and the defendants acting under this section sewered the same and paved the roadway thereof. The plaintiffs thereupon sued them for trespass. The alley or court led from a highway to a mill, and the portion sewered and paved by the defendants was bounded on each side by cottages, some twenty in number, and their gardens and yards. It was the only means of access to the cottages and mill; but the owners and occupiers of the adjoining property were the only persons having rights of road over it. The traffic in connection with the mill was very considerable. It was held that the words in the definition of "street" in s. 4 must be read into this section; that the question whether the alley or court was a street or not within the meaning of the section, was a question of law to be decided by the judge, and not a question for the jury; and that, upon the facts, the alley or court in question was a street within the meaning of the section. In *Richards* v. *Kessick* (1888), 57 L. J. M. C. 48; 52 J. P. 756, FIELD, J., after quoting the definition of a street in s. 4, said: "On looking at the 150th section, I cannot understand how any doubt can have arisen as to reading this definition into it; but we have not to decide that point now, because in *Jowett* v. *Idle L. B.*, which is the last case on the point, it was decided that it must be read in." In the same case WILLS, J., said: "It was argued that s. 4 should not be read with s. 150, and the case of *Maude* v. *Baildon L. B.* was cited in support of that contention, and it was said to be followed by *Cleckheaton L. B.* v. *Burnup*. I always thought that decision of *Maude* v. *Baildon L. B.* was wrong . . . and it now appears that it lately has been decided in the Court of Appeal in the case of *Jowett* v. *Idle L. B.* that the definition of the word 'street' given in the fourth section must be construed along with the 150th section." *Jowett* v. *Idle L. B.* was again followed in *Fenwick* v. *Croydon R. S. A.*, [1891] 2 Q. B. 216; 55 J. P. 470. There the appellant was summoned under this section for non-payment of expenses incurred by the authority in sewering and paving a road on which his premises abutted. An Order of the L. G. B. under s. 276 had declared this section to be in force as to the road in question, which the order also referred to as "a street." The road ran from a turnpike road to a bridge, where it passed into another parish, and was from that point repaired by the local board of that parish as a highway. It was about 900 feet long. It had on the south side several houses, including the appellant's house, abutting on

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it; on the north side there were none for 785 feet from the turnpike road. For the rest of its course it was bounded on that side by the authority's sewage farm, on which were two buildings. It was a public highway. There was no evidence of formal dedication of the road, but there was evidence of its use as a highway since 1835, and some evidence before 1835, but none inconsistent with its having been then merely an occupation road or footpath. The justices held that the Order of the L. G. B. was conclusive that the road was a street, and further held that, although, in their opinion, it was not a street in the popular acceptation of the word, it was a street within s. 4. On a case stated, it was held that the justices were wrong in holding that the Order was conclusive that the road was a street but that by the definition in s. 4 it was a street within the meaning of this section.

A path in Epping Forest was made up as a street under the Private Street Works Act, 1892. The case was decided upon another point; but it was apparently considered that the path was a "street" for the purposes of the Act, though it was necessary that the consent of the Epping Forest Conservators should be given before the work was done, the land being part of the forest and subject to the Forest Act (*Woodford U. D. C.* v. *Henwood* (1899), 64 J. P. 148).

Where a roadway runs over land acquired by a railway company under its compulsory powers, and the application of this section to such roadway would be inconsistent with the appropriation of the land to the objects of the company, the section cannot (*semble*) be put into operation; *secus*, where the making and dedication of such roadway, so far from being inconsistent with the company's objects, must have been contemplated by the framers of its special Act (*Stretford U. D. C.* v. *Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 19 T. L. R. 546). See also *Glasgow and S. W. Rail. Co.* v. *Ayr Magistrates*, [1912] A. C. 520, as to the site of an existing street acquired by a railway company by agreement.

A railway company built a bridge over their railway in the metropolis, with additions, on which their station was erected. They lighted the bridge with street lamps, and allowed the public for eighteen months to use it as a highway. They had made an agreement with a water company to allow water pipes to be carried over the bridge. It was held that the bridge had become by dedication a street; that the company could not close it so as to prevent the vestry paving it as a "new street"; and that the company as owners were liable to pay paving expenses (*North London Rail. Co.* v. *St. Mary, Islington* (*Vestry of*) (1872), 37 J. P. 341; 27 L. T. 672).

This section applies to all present and future streets, except when they are repairable by the inhabitants at large, and whether they have been dedicated to the public or not: *per* QUAIN, J., in *St. Mary, Islington* (*Vestry of*) v. *Barrett* (1874), L. R. 9 Q. B. 278; 38 J. P. 198, following *Kingston-upon-Hull Corporation* v. *Jones* (1856), 21 J. P. 37; 1 H. & N. 489. In a later case, JESSEL, M.R., said that the word "streets" as here used "clearly extends to places which are in all respects private, and over which the public have no right." And he added, "What is the Act for? It is a Public Health Act. The owners of these private courts and alleys are, of all the people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the legislature intended to except such places from the operation of the Act? I should say, if the Act were passed for anybody, it must have been to include those owners who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys over which the public have no street rights whatever, but which are intended to be used for the dwellings of the poor and are unprovided with what, according to modern science, is known to be absolutely necessary for their well being" (*Taylor* v. *Oldham* (*Corporation of*) (1876), 4 Ch. D. 395). See also *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405, where, though the owner of the soil of a road put up bars and took tolls from passengers, it was held that such road might yet be a "street," and *Walthamstow U. D. C.* v. *Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835, where a *cul-de-sac* passage, giving access only to the back premises of five

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houses, was held to be a "street" within this section. In the latter case, BUCKLEY, J., said: "I have no doubt I have to see what sort of a passage this is, whether it is a private approach to a man's house,—his avenue leading up to his house from the street, or . . . a passageway rightly open to any member of the public who is going along an adjacent highway, and as to which DAY, J., said, in *R.* v. *Goole L. B.*, 'there is nothing to show that the public cannot pass along it.'"

D. owned a house, the back premises of which had a door leading into an alley or lane which had been used for fifty years by the tenants of nine houses as an access, but there was no thoroughfare through it. It was held that there was evidence justifying a finding that this was a new street within the meaning of the Metropolis Management Acts, so as to make the owners of the houses abutting on it liable for the expenses of paving it (*Dodd* v. *St. Pancras* (*Vestry of*) (1870), 34 J. P. 517).

Projected streets.

In *Healey* v. *Batley Corporation* (1875), L. R. 19 Eq. 375; 39 J. P. 423, it was held under the following circumstances that an owner of land in a suburb of a town who allowed the public to pass over his land, could not be compelled to pave and sewer under provisions similar to those contained in the text. He had in 1850 demised the coal under the land for six years to K., the owner of the adjoining land. In the lease was an agreement that a road, to be called *Union Street*, should within five years be made across the land under which the coal lay and K.'s land; that a sewer should be made under such road; that the lessor and lessee should, at their own cost, construct and repair so much of the said road and sewer as should extend along their respective lands; and that the road should be used as a public road for all purposes for ever thereafter, and should be maintained by each of the parties so far as the same should extend over his land until the same should be adopted by the surveyor of highways. The road and sewer were never made, and there was no dedication of a highway to the public by notice under the Highway Act. A brickfield and afterwards a colliery were opened on K.'s land, and gaps were opened in the fences to give access for carts and foot passengers. In 1869 posts and chains were placed across one of the openings, but after a few months the chains were removed. In 1870 K.'s land was sold, and in 1871 conveyed to the plaintiff in fee. In 1872 the local board called upon him to pave and sewer the alleged "street." It was held that the agreement in the expired lease had been abandoned, and could not be enforced, and that it did not amount to a dedication of a right of way to the public. In this case it will be seen that there never was anything which could be called a street. In another case H., lessee of land under a lease dated 1855, in 1865 laid out a proposed road across part of the land, and built six houses on one side of the road. In 1870 she abandoned her intention of making the road, and in 1874 she demised the remainder of the land, including the site of the abandoned road. In 1880 the urban authority called upon the representatives of H. to pave the road, and on their neglecting to do so entered on the land and began the work. It was held that the laying out of the proposed road was no dedication of a public right of way, and that an injunction must go against the authority (*Hall* v. *Bootle Corporation* (1881), 44 L. T. 873. In 1907 plans were passed showing an intended new street with a southern outlet into a highway but no northern outlet. The plans showed the land on the east side of the street plotted out for building. The street was constructed, and kerbed and channelled on its eastern side with a footpath, at the cost of the owner to the satisfaction of the authority, who laid a water main in it. A gas main was also laid. By 1910 the owner had disposed of all the plots except the two northernmost, and had granted to his lessees a right of way over the new street, and houses were built. In September, 1910, K. bought the two remaining plots and the north end of the new street so far as it was conterminous with the two plots, with a right of way over the new street up to the two plots, and erected a fence with an opening for gates across the new street in a line with the southern boundary of the two plots, thus enclosing the north end of the new street bought by him. The authority had not taken over the street or expended any public money upon it, but alleged that its entire length had been dedicated to the public, and threatened to pull down the fence. It was held, on the evidence, that the new street had not become a highway:—*Held*, *also*, that the byelaws and special Act of the authority dealt only with the width and level, and not with the length, of new streets, and therefore

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that, in the absence of an order under s. 17 of the P. H. A., 1907, the owner was entitled to deviate from the plans and to enclose the dead end of his private road (*Kirby* v. *Paignton U. D. C.*, [1913] 1 Ch. 337; 77 J. P. 169). See also *Sunderland Corporation* v. *Skinner*, on p. 338, *post*; *Mackett* v. *Herne Bay Commissioners*, on p. 338, *post*; *Rolls* v. *St. Mary, Newington* (*Vestry of*), W. N. 1873) 168, and *Tarrant* v. *Woking U. D. C.* (1914), 3 K. B. 796; 79 J. P. 22, on p. 337, *post*.

A burn, having a public footpath on one side, was piped in, with the result that vehicles could be driven (though with difficulty) along its line from one street to another; but it was not intended that there should be any road, and no attempt had been made to form one:—*Held*, that the strip of land was not a street within somewhat similar provisions in a Scotch Act (*Dunfermline Town Council* v. *Rintoul*, [1911] S. C. 737).

R. agreed with an authority that when he used his land for building he would throw a strip eighteen feet wide into a road eighteen feet wide made by an adjoining owner along his boundary. Before he did so the authority called upon him as a frontager to join in sewering and paving the original road; and, upon the frontager's default, the authority did the work. After apportionment, R., as he had agreed, threw eighteen feet into the road, and (though he was not bound to do so by his agreement) paved and sewered his strip. It was held that the original eighteen foot road was a "street" which the authority had the right to require R. to sewer, pave, etc. (*West Hartlepool Corporation* v. *Robinson* (1897), 62 J. P. 35; 77 L. T. 387).

In *Camberwell Borough Council* v. *Dixon*, [1910] 1 K. B. 424; 74 J. P. 77, it was held that a metropolitan authority are not precluded from paving a street at the cost of the frontagers as a "new street," by the fact that it has been laid out or widened in contravention of some byelaw or statute.

In the case of a street down which the boundary between two districts runs, s. 150 does not seem to be applicable to the making up of the surface as a whole, though each council could probably make up the strip within its district and recover the expenses from frontagers upon its own side. See hereon *Mayor, etc. of Hornsey* v. *Birkbeck Freehold Land Society*, and cases cited therewith, on p. 300, *post*. The L. G. B. expressed the opinion that there was no provision in the P. H. A., 1875, which would enable two councils to carry out a joint scheme for the making up of a street so situated at the cost of the owners. The boundary may be altered under the L. G. A., 1888, s. 54 or s. 57, with the object of getting over the difficulty.

It is a question of fact whether a piece of ground, *e.g.*, a strip of pavement separated from the roadway of a street by posts, is or is not part of the street which may be dealt with under this section (*Bell & Sons* v. *Great Crosby U. D. C.* (1913), 77 J. P. 37).

Repairable by the inhabitants at large.

(*c*) **Repairable by the inhabitants at large.**—The words "repairable by the inhabitants at large" were not in the corresponding section (s. 69) of the P. H. A., 1848, but were added by 15 & 16 Vict. c. 42, s. 13. The difficulty which arose in *Sunderland* v. *Herring* (1853), 17 J. P. 741, is thus obviated. There are, however, local Acts under which frontagers have been held liable for the expense of making up streets repairable by the inhabitants at large: see *Ashton-under-Lyne Corporation* v. *Pugh*, [1898] 1 Q. B. 45; 61 J. P. 788; *Lodge* v. *Huddersfield Corporation*, [1898] 1 Q. B. 847, 859; 62 J. P. 387, 515; *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364; 49 J. P. 676; *Crump* v. *Chorley Corporation* (1908), 72 J. P. 334; 98 L. T. 805; *Stockport Corporation* v. *Cheetham* (1860), 24 J. P. 196; *Rochdale Corporation* v. *Leach* (1910), 74 J. P. 89; 101 L. T. 881; *Birkenhead Improvement Commissioners* v. *Sansom* (1876), 40 J. P. 406; 34 L. T. 175; *Leeds* (*Corporation of*) v. *Hawke*, Times, July 17th, 1897.

If a street is repairable by the inhabitants at large, there is no jurisdiction under this section. Therefore where a street was shown to have been a highway before 1835 (as to this date and its importance in this respect, see p. 275, *ante*), it was held that the frontagers could not be made liable (*Rishton* v. *Haslingden Corporation*, [1898] 1 Q. B. 294; 62 J. P. 85). And in the case of a highway dedicated since 1835, where from long user it was presumed that the requirements of ss. 84—92 of the Highway Act, 1835, had been complied with, the same result followed (*Leigh-on-Sea U. D. C.* v. *King*, p. 293, *post*; but see *Cababé* v. *Walton-on-Thames U. D. C.*, p. 275, *ante*.)

The words "repairable by the inhabitants at large" appear to be used in

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contradistinction to highways repairable by individuals or corporate bodies by prescription, *ratione tenuræ*, *ratione clausuræ*, or under some statute or statutory award, or highways repairable by no one. In the case of highways repairable by individuals there may, in case of default, be an ultimate liability upon the inhabitants (see Pratt on Highways (16th ed.), pp. 78, 79, and cases there cited as to roads made under turnpike and other local Acts); but it is submitted that for the purposes of this section at any rate such highways cannot be said to be repairable by them: *cf. Swansea Improvement Commissioners* v. *Glamorganshire County Roads Board* (1880), 43 J. P. 798; 41 L. T. 583; *Gibson* v. *Preston Corporation* (1870), L. R. 5 Q. B. 218; 34 J. P. 342; *Austerberry* v. *Oldham Corporation* (1885), 29 Ch. D. 750; 49 J. P. 532; *Wallington* v. *White*, *infra*. As to what roads are repairable by the inhabitants at large, see pp. 274, *et seq.*, *ante*; reference may also be made to the following cases:

A field belonging to B. was laid out for building, and a street formed in 1836, which had ever since been used as a public thoroughfare. B. had never formally dedicated it to the public, and, in 1848, he granted a licence to W. to lay down gas pipes, for which, and for preventing others from interfering, he received from W. a small annual rent. After 1853 the local board repaired the street, and in 1858 they put up notices under the P. H. A., 1848, s. 70 (corresponding to s. 152, *post*, p. 319), declaring it a highway. W. having been summoned for wilfully injuring the street, being a highway, it was held that there was ample evidence that the street had been dedicated by B., and was a highway (*Thomas* v. *Williams* (1860), 24 J. P. 821).

A new street had been repaired by the owners in 1828, and the public had ever since been allowed freely to pass through it, and great numbers had used it. There had been no express dedication, nor any certificate of justices rendering the township liable to repair, and it had never in fact been repaired by any one since the above date. The local board having called upon the adjacent owners to pave, sewer, and level it, and on their refusal having done so themselves, it was held that there was ample evidence that this was a highway dedicated to and adopted by the public before 1836, and therefore repairable by the public (*Illingworth* v. *Montgomery* (1860), 24 J. P. 101).

In 1825, by a local Act, commissioners were authorised and required to repair all streets and highways in a town; and it was enacted that when any new streets should be laid out and put in good order to their satisfaction, then the commissioners might declare such streets to be public highways, and were thereafter to repair them like the other streets in the town. In 1830 a new street was laid out and dedicated to the public, who thereafter used it as a highway, but it was never declared to be such by the commissioners. Subsequently the owners of land adjacent to the street were required to pave it under the P. H. A., 1848, s. 69 (corresponding to s. 150). It was held that they were liable, for the street was not a highway repairable by the inhabitants at large, the local Act having prevented its becoming such a highway unless so declared by the commissioners. The common law liability of the inhabitants was taken away by a provision in the Act giving power to the commissioners to make rates, and exonerating every person assessed from the performance of statute duty for repair of the public highways within the town. It might have been otherwise had the ultimate liability of the inhabitants remained as in *R.* v. *St. George's, Hanover Square* (1812), 3 Camp. 222 (*Wallington* v. *White* (1861), 30 L. J. M. C. 209; 25 J. P. 358; affirmed *sub nom. Willes* v. *Wallington* (1862), 32 L. J. C. P. 86; 27 J. P. 295). This case was distinguished from *Hirst* v. *Halifax L. B.* (1870), L. R. 6 Q. B. 181; 35 J. P. 261. In that case, by a local Act of 1798, trustees were authorised to pave streets in the township of H. and levy rates on the inhabitants; and all who paid these rates were to be exempt from all other charges for paving. In 1816 A. laid out a street, which he dedicated to the public, and in 1819 it had been used by the public. In 1823 another local Act repealed that of 1798, appointed trustees, who were to have all the rights, duties, and obligations of highway surveyors, and exonerated the inhabitants from liability to repair the highways. The local board paved the street under the P. H. A., 1848, and charged the expenses on the adjoining owners. It was held that the street was a highway repairable by the inhabitants at large, for there was nothing in the first Act to prevent a street becoming a highway by dedication and user prior to

1823, and that the second Act applied only to streets then in progress or afterwards laid out, and had no effect on streets already public. "Had the second Act been passed before the street became a highway, the case would have been exactly analogous to *Wallington* v. *White, supra*" *per* LUSH, J. **Note to Section 150.**

In *Austerberry* v. *Oldham* (*Mayor, etc. of*) (1885), 29 Ch. D. 750; 49 J. P. 532 A. sold to trustees a piece of land as part of the site of a road intended to be made and maintained by the trustees under the provisions of a contemporaneous trust deed (being a deed of settlement for the benefit of a company formed to raise the necessary capital for making the road), and in the conveyance the trustees covenanted with A., his heirs and assigns, that the trustees, their heirs and assigns, would make the road and at all times keep it in repair, and allow the use of it by the public subject to tolls. The land so conveyed was bounded on both sides by other land of A. The trustees made the road which afforded the necessary access to A.'s adjoining lands. A. afterwards sold such lands to the plaintiff, and the trustees sold the road to the defendants, both parties taking with notice of the covenant to repair. The Court of Appeal held that the plaintiff could not enforce the covenant against the defendants, for its benefit and burden did not "run with" the land. The promoters of the intended road by deed declared that the road should not only be enjoyed by them for their individual purposes, but "should be open to the use of the public at large for all manner of purposes in all respects as a common turnpike road," but subject to the payment of tolls by the users. It was held that the road was not "a highway repairable by the inhabitants at large" within the meaning of this section. The court intimated an opinion that an individual cannot, without legislative authority, dedicate a road to the public if he reserves the right to charge tolls for the user; and that the mere fact that a number of persons formed themselves into a company for making and maintaining a road, and erected gates and bars and charged tolls, did not make the road a turnpike road in the proper sense of the term. In *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405, the owners of a road put up bars upon it, and took tolls from the public for the passage of vehicles, horses, and cattle. It was held to be "a street" not repairable by the inhabitants at large.

A new highway substituted under the Highway Act, 1835, ss. 84 *et seq.*, for an old one repairable by the public is similarly repairable (*ibid.*, s. 92; see also s. 93, if the old road was not so repairable), and the same rule apparently applies to a substituted highway made by a railway company under the Railways Clauses Act, 1845, s. 56 (*Friern Barnet L. B.* v. *G. N. Rail. Co.* (1893), 57 J. P. 53; *Mayor, etc. of Folkestone* v. *Marsh* (1906), 70 J. P. 113; 94 L. T. 511): see also as to a new road substituted under a local Act, *St. Giles, Camberwell* (*Vestry*) v. *Crystal Palace Co.*, [1892] 2 Q. B. 33; 57 J. P. 5. An order diverting a footpath repairable by the public along a new street may be so worded as to make the whole width of the new street (and not the pavement only) similarly repairable (*Kingston-on-Thames Corporation* v. *Baverstock* (1909), 73 J. P. 378; 100 L. T. 935). After long user by the public of a diverted or substituted way, it may be presumed that the change was effected with the proper formalities (*Leigh-on-Sea U. D. C.* v. *King*, [1901] 1 K. B. 747; 65 J. P. 243; but see *Cababé* v. *Walton-on-Thames U. D. C.*, p. 275, *ante*). Substituted and diverted highways.

As to the admissibility and value of maps in questions as to the liability to repair a highway, see *Vyner* v. *Wirral R. D. C.* (1909), 73 J. P. 242; 7 L. G. R. 628; *Att.-Gen.* v. *Horner* (No 2), [1913] 2 Ch. 140; 77 J. P. 257; and *cf. Fowke* v. *Berington* (1914), 2 Ch. 308, and *A.-G.* v. *Meyrick* (1915), 79 J. P. 515.

Owners of land adjoining a road which a local authority have agreed to take over as a highway repairable by the inhabitants at large, cannot by agreement between them and the authority confer jurisdiction to act under s. 150. See *Mayor, etc. of Folkestone* v. *Marsh*, cited on p. 268, *ante*; but *cf. Mayor, etc. of Folkestone* v. *Rook*, *ibid.*

An application to justices by a local board for the recovery of expenses from an owner under this section was dismissed on the ground that the street was a highway repairable by the inhabitants at large. The board some years later made an application against the same person for the recovery of further expenses subsequently incurred in respect of the same street. It was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the adjudication of the

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justices that the street was a highway repairable by the inhabitants at large on the first application was beyond their jurisdiction, for they had only power to make or refuse an order for the payment of the expenses claimed; that, therefore, such adjudication did not estop the board from claiming the expenses claimed on the second application, and consequently that a magistrate could make an order for their payment (*R.* v. *Hutchins* (1881), 6 Q. B. D. 300; 45 J. P. 504). This decision was followed by a Divisional Court in a case arising under a local Act similar in terms to the Private Street Works Act, 1892 (*Wakefield Corporation* v. *Cooke*, [1902] 1 K. B. 188; 66 J. P. 232), and also in a case arising under the Metropolis Management Acts (*Scott* v. *Lowe* (1902), 66 J. P. 520). The *Wakefield Case*, was however, appealed; and it was ultimately decided in the House of Lords that the principle of the decision in *R.* v. *Hutchins*, *supra*, was not applicable (*Wakefield Corporation* v. *Cooke*, [1904] A. C. 31; 68 J. P. 225). See the notes to the Private Street Works Act, 1892, s. 7, *post*.

Part of a street.

(*d*) **Part of such Street.**—It was held with reference to the Metropolis Management Acts, 1855 and 1862, that, although the district board might have resolved that part only of a road should be repaired, yet as they had resolved that the whole should be repaired, there must be only one apportionment on all the owners along the entire road. Therefore, the surveyor having divided the road into four sections, and apportioned the cost of repairing each section amongst the owners of property in that section, it was held that the apportionments were bad, and unenforceable (*Whitchurch* v. *Fulham Board of Works* (1866), L. R. 1 Q. B. 233; 30 J. P. 229).

The owners of a field adjoining a highway repairable by the inhabitants at large used it for building, and threw open to the highway a strip of land in front of the new houses. It was held that the houses with the strip of land in front of them formed a street within the meaning of the section, which the authority could compel the frontagers to pave, channel, and kerb, to their satisfaction (*Richards* v. *Kessick* (1888), 57 L. J. M. C. 48; 52 J. P. 756). See the observations on this case in *White* v. *Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425, and *Property Exchange, Ltd.* v. *Wandsworth District Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435; and *cf. Portsmouth Corporation* v. *Hall* and *Escott* v. *Newport Corporation*, *post*, pp. 316, 323.

A "part of a street" may be such part as is not occupied by tram lines (*Standring* v. *Bexhill Corporation* (1909), 73 J. P. 241; 7 L. G. R. 670).

What works may be required: works of sewering.

(*e*) **Sewered, Levelled, etc. to the satisfaction of the Urban Authority.**—Where an owner had, with the sanction of the Metropolitan Board of Works, laid a sewer in a new street, and the district board afterwards took up this sewer and laid another for the drainage of the neighbourhood, it was held that the owner could not be charged with any portion of the cost of the second sewer (*Fulham District Board of Works* v. *Goodwin* (1876), 1 Ex. D. 400; 41 J. P. 134). Where a sewer had been laid in a street by private persons, and had vested in the urban authority under s. 13, *ante*, p. 45, it was held that the authority could not require the owners to lay a new sewer when a new system of drainage had to be adopted (*Bonella* v. *Twickenham L. B.* (1887), 18 Q. B. D. 577; affirmed, 20 Q. B. D. 63; 52 J. P. 356). See observations on those cases in *Simmonds* v. *Fulham Vestry*, [1900] 2 Q. B. 188; 64 J. P. 548.

It does not, however, follow because there is in a street a sewer which has become vested in the authority, that the street is sewered "to their satisfaction" so as to prevent their requiring it to be sewered under this section. In *Barrow-in-Furness (Mayor, etc. of)* v. *Dawson* (1890), 13 M. C. C. 13, SMITH, J., held that it was a question of fact to be decided on the evidence whether an authority had expressed satisfaction with, or were in fact satisfied with, the sewer as originally constructed; but he accepted the proposition laid down in the *Twickenham Case*, that "if after the lapse of a reasonable time after the vesting of sewers in a corporation they had done nothing and expressed no view on the subject, it must be taken to be conclusive as a matter of fact that at the time the sewer was originally constructed they were satisfied with it for the purpose for which it was then used." And see *Walthamstow L. B.* v. *Staines*, [1891] 2 Ch. 606. A road having been made by the owners of a building estate about 1859, a 12-inch pipe was laid by them along it from end to end. Houses were built from time to time in the neighbourhood of the road, and some

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of their owners connected their drains with the 12-inch pipe; but some of the earlier houses had a separate system of drainage into cesspools in a wood at the back of their premises. Drainage into the 12-inch pipe commenced at least as early as 1876. The pipe discharged into a culvert, and thence into a river. The plaintiffs' predecessors, the W. local board, were constituted in 1878, and could in that year have put into operation the provisions of this section (s. 150). There was evidence that in 1882 their surveyor knew of at least one connection of drains with this pipe, and that complaint having been made in 1892 as to the outfall into the river, the plaintiffs proposed a scheme by which the drainage was to be diverted from the 12-inch pipe and carried into septic tanks. It was held on the evidence as a finding of fact that the authority must be taken to have been satisfied with the sewer, and could not now resewer the road at the cost of the frontagers under s. 150 *Wilmslow U. D. C.* v. *Sidebottom* (1906), 70 J. P. 537; 5 L. G. R. 80). *Semble*, on the authority of *Bonella* v. *Twickenham L. B.*, *supra*, when a sewer has thus existed for a long period of years, it must be inferred that the sewer has been accepted by the authority as a sewer laid to their satisfaction (*ibid.*).

In *Hornsey L. B.* v. *Davis*, [1893] 1 Q. B. 756; 57 J. P. 612, the owners of a building estate, predecessors in title of the defendant, deposited plans which were approved by the authority, showing a road to be drained by an intended sewer crossing the New River; and an agreement was made by the New River Company with the owners to divert the New River for the purpose of laying the sewer according to the plans. The sewer was laid as far as the New River, where it stopped, and the New River never was diverted according to the agreement, so that the sewer was never completed and had no outfall; but the work done was from time to time inspected during its progress by a servant of the authority, who authorised the covering in of the various sections, and made reports to the authority, who never expressed any dissatisfaction. The sewer was never used, and in five years became out of repair, whereupon the authority gave notice to the frontagers to construct a new sewer, and in default themselves constructed it. It was held that the authority had power to accept and did accept the original sewer, although it had no outfall and was incapable of being used as a sewer, and that the road having once been sewered to their satisfaction the expenses of constructing the new sewer were not chargeable on the frontagers.

A private street is not necessarily "sewered" within the meaning of this section where the houses in it are served either singly or in groups by private drains or sewers constructed by the several owners of the houses, but not forming one system. Accordingly, the authority may, although these private sewers are vested in them under s. 13, require the frontagers to sewer the street, unless they have, either expressly or by implication, determined that it is already sewered to their satisfaction, in which case their powers are no longer exercisable, and any new sewers required must be provided at their expense under ss. 15, 18 (*Handsworth U. D. C.* v. *Derrington*, [1897] 2 Ch. 438; 61 J. P. 518). This decision is in accordance with an earlier one (*Handsworth U. D. C.* v. *Taylor* (1893), [1897] 2 Ch. 442 *n*; 58 J. P. 9), where ROMER, J., said: "The owner of houses wished to exercise his right of draining those houses into the nearest sewer in the district, and what he did was to form a drain for the houses which, for his purposes, should drain them into the nearest sewer, and that he did. That was approved of and sanctioned by the board; but, looking at the circumstances of the case, I am satisfied that it was not intended by the owner or by the board, at the time, that this drain should be regarded as or accepted as a sewering of part of the street in which these houses were. What was done was merely a drainage of the particular houses by one drain instead of several into the nearest sewer. The board, in my opinion, never did approve of the drain as a sewer to their satisfaction for any part of this street." See also observations of CHANNELL, J., in *Rishton* v. *Haslingden Corporation*, [1898] 1 Q. B. 294; 62 J. P. 85, and *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496.

Up to 1881 the soil sewage in a private street was drained into cesspools, and the surface water was carried by channels constructed by the owners of the adjoining land into a river. In 1881 the authority made a contract for the construction of soil and surface water sewers in the street, but subsequently decided to omit the surface water sewer. The soil sewer was constructed at the expense of the rates, the surface water continuing to be carried away by the channels. In 1891 the

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authority resolved to serve notices under s. 150, requiring the frontagers to pave, metal, channel, and make good the street; but before the notices were served they accepted a guarantee from twelve frontagers to put and maintain the road in repair. In 1904 the authority served notices on the frontagers requiring them to provide a surface water sewer, and, on the frontagers making default, themselves provided the sewer. On proceedings to recover the expenses, it was objected that the street had been sewered to the satisfaction of the authority prior to 1904; but the justices found as a fact that it had not. It was held that there was evidence upon which they could arrive at that conclusion (*Bloor* v. *Beckenham Urban District Council*, [1908] 2 K. B. 671; 72 J. P. 325).

Works other than sewering.

In the metropolis, when a new street is paved at the expense of the owners, the authority is bound afterwards to keep it in repair, whether it has become a highway or not (*R.* v. *Hackney District Board of Works* (1873), L. R. 8 Q. B. 528; *St. Giles, Camberwell* (*Vestry of*) v. *Hunt* (1887), 56 L. J. M. C. 65), and in *Walthamstow L. B.* v. *Staines*, *supra*, CHITTY, J., appears to have held generally that the powers conferred by this section (s. 150) are exercisable once only: see also *Derby* (*Mayor, etc. of*) v. *Grudgings*, [1894] 2 Q. B. 496; 58 J. P. 685, *per* CHARLES, J., and *Smith* v. *Croydon L. B.* (1868), 32 J. P. 709. But in *Barry and Cadoxton L. B.* v. *Parry*, [1895] 2 Q. B. 110; 59 J. P. 421, it was held by Lord RUSSELL, C.J., and CHARLES, J., that an authority may call upon the frontagers to do any of the works (except sewering, as to which see the cases cited, *supra*) mentioned in this section from time to time, as occasion may require, unless and until the street has been declared to be a highway repairable by the inhabitants at large, notwithstanding that such work may have been previously done at the expense of the frontagers to the satisfaction of the authority.

Levelling.

The power to "level" given by this section only attaches where the particular street requires to be levelled, looking at it as an isolated street. Where, therefore, the local board required the owner of a house to level the part of a street upon which his house fronted, so as to make it on a level with other streets, it was held that they could not recover from him the expenses incurred by them in doing the work (*Carey* or *Caley* v. *Kingston-upon-Hull L. B.* (1864), 29 J. P. 116; 5 B. & S. 815). See, however, in districts where the Private Street Works Act, 1892, is in force, s. 9, thereof.

Alteration of roadway and pavement.

An authority have no power when making up a street under this section to alter the respective widths of the carriageway and footway of the street (*Robertson* v. *Bristol* (*Mayor, etc. of*), [1900] 2 Q. B. 198; 64 J. P. 389; *Wandsworth Borough Council* v. *Golds*, [1911] 1 K. B. 60; 74 J. P. 464), except in cases where the relative proportions of carriageway and footway have been left undetermined by the owner of the soil (*Stretford U. D. C.* v. *Manchester, etc. Rail. Co.*, *ante*, p. 289: *per* the VICE-CHANCELLOR of the County Palatine of Lancaster).

Widenings.

It will be observed that the authority are not empowered to call upon the owners to widen a private street; and notices which contain such a requirement would probably be held to be invalid. As to the circumstances under which the authority could themselves undertake a widening, see notes to s. 154.

Maintenance.

The L. G. B. held in a case which came before them that notices which required owners to maintain a street for a period after it was made up were of doubtful validity, and called in question the power of the authority to proceed upon default of the owners. The Board pointed out that the owners might have been willing to do all the works which they could be legally required to do under the section.

Lighting.

The previous Acts did not mention "lighting." Under this section the frontagers can only be required to provide "means of lighting," which presumably means structural works only, such as pipes or wires, lamps, etc., and does not include a supply of gas, etc. Under s. 161 the authority may, at the cost of the general district rate, provide such lamps, etc. as they think necessary for lighting the streets in their district. They may therefore provide lamps and other apparatus in private streets instead of using their powers under s. 150. The authority may also, if they think fit, and if the circumstances warrant such a course, defray the cost of lighting private as well as public streets.

The notice to pave, etc.

(*f*) **Notice to pave, etc.**—Note that the notice may be given to the owner *or* occupier, but that owners only are responsible for the expenses if recovered

summarily. Unless notice has been given to the owner *or* occupier to do the work, the expenses cannot be recovered from the former (*Jarrow L. B.* v. *Kennedy* (1870), L. R. 6 Q. B. 128; 35 J. P. 248; and see also *Pierson* v. *Altrincham U. D. C.* (1917), 81 J. P. 149; 15 L. G. R. 228.

An authority incurred expenses in paving a street without having served a notice under this section upon the then owners of certain premises. They now claimed in an action against the present owners a declaration that the expenses were a charge on the premises (see s. 257, *post*). A predecessor in title of the defendants had paid to the authority an instalment of the expenses. It was held that the authority were not entitled to the declaration claimed, inasmuch as service of the notice was a condition precedent to liability on the part of the defendants, and the payment by their predecessors could not operate as a waiver of the omission (*Farnworth L. B.* v. *Compton* (1886), 34 W. R. 334; and see *Bacup (Corporation of)* v. *Smith, ante*, p. 14).

In January a local board passed a resolution for the paving and sewering of a street, and on May 11th notice was served on P. & Co., requiring them to pave, sewer, etc. P. & Co. had been owners of land abutting on the street, but by a conveyance of April 27th had conveyed their estate to the respondent. The board had no notice of this conveyance. In an action by the board to recover the paving expenses from the respondent, it was held that P. & Co. were not at the time of the service of the notice either owners or occupiers of the premises, and that as the proper steps prescribed by the section had not been taken, the respondent was not liable (*Wallsend L. B.* v. *Murphy* (1889), 61 L. T. 777; 6 T. L. R. 29).

According to a decision of KEKEWICH, J., the notice must be served on every frontager, and, if it is not, the expenses cannot be recovered even from those who have been served (*Handsworth U. D. C.* v. *Derrington*, [1897] 2 Ch. 438; 61 J. P. 518). Notices were given to all the frontagers in a street save one, and the omission was not discovered until the work had been begun. The work was then stopped and notice given to the frontager, who did nothing, and the authority completed the work. It was held that he could not be made liable as he had never had the opportunity of doing the work, as the statute required (*Leeds (Lord Mayor, etc. of)* v. *Armitage* (1899), 43 Sol. J. 203).

For definition of owner, see s. 4, *ante*, p. 8. As to authentication and service of the notice, see ss. 266, 267, *post*.

Service of the notice on a person who is *de facto* in receipt of the rent, is a service on the owner sufficient to satisfy the requirements of this section (*Peek* v. *Waterloo and Seaforth L. B.* (1863), 33 L. J. M. C. 11; 27 J. P. 807; and see *St. Helen's (Mayor of)* v. *Kirkham*, where an agent for the collection of rents was held to be an owner within the meaning of this section, and other cases cited therewith on p. 14, *ante*). Section 267, *post*, which contains provisions as to service of notices, was intended to aid those who have to serve notices, and was not meant to prevent a notice, otherwise perfectly good, from being good. Therefore, service at an owner's place of business, by delivering and reading it to his clerk, was held a good service (*Mason* v. *Bibby* (1864), 33 L. J. M. C. 105; 28 J. P. 121; and see *Woodford U. D. C.* v. *Henwood* (1899), 64 J. P. 148).

As to what work an authority may require frontagers to do, see preceding note.

As some difficulty had been experienced in framing notices under the corresponding P. H. A., 1848, s. 69 (*Mayor of Blackburn* v. *Parkinson* (1858), 28 L. J. M. C. 7; 33 L. T. (o.s.) 119; *Bayley* v. *Wilkinson* (1864), 16 C. B. (N. S.) 161); 24 & 25 Vict. c. 61, s. 17. enacted that the form of notice in Sched. A. to that Act, or one to the like effect, might be used. The form of notice under this Act will be found in Sched. IV., Form G., *post*, although no reference is made to it in the text.

In *Acton L. B.* v. *Lewsey* (1886), 11 App. Cas. 93; 50 J. P. 708, Lord BRAMWELL said: "Upon the point which occurred to me, that the board had no right to order the way in which the work should be done, I still have sufficient doubt to recommend local boards, when they do give orders that work shall be done, not to prescribe the mode in which it shall be done, but to content themselves with saying, that if done in a particular way, it will be satisfactory to them." A notice which is not in the form set out in Sched. IV., but merely refers in general terms to the provisions of the section and does not give particulars of the work to be

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done, or mention that plans and sections are deposited for inspection, is not sufficient (*Stourbridge U. D. C.* v. *Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3).

A corporation paved three roads under a local Act and sued the frontagers for the expenses. One road was a "back road" and two were "cross roads" (as defined by the Act), but the notice called them all "back roads":—*Held*, that the mistake could not have misled the frontagers, and that, therefore, the notice was sufficient (*Blackburn Corporation* v. *Sanderson*, [1902] 1 K. B. 794; 66 J. P. 452).

See *Acton L. B.* v. *Lewsey, Kershaw* v. *Sheffield Corporation*, and *Acton U. D. C.* v. *Watts*, pp. 307, 308, *post*, as to the effect of an authority carrying out work not identical with that specified in their notice.

As to the time allowed by the notice for doing the work, see note (*hh*), *post*, p. 303.

A notice is not bad because it may involve the entering upon the soil of another person to execute the work comprised in it (*West Hartlepool Corporation* v. *Robinson* (1897), 62 J. P. 35; 77 L. T. 387. And see *Lancaster* v. *Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405).

A notice which is *ultra vires* as to part, but good as to the residue, may be enforceable in respect of the valid portion. Thus a notice to flag a street, referring to a plan which included a garden not dedicated to the public, was held to be valid so far as it applied to the street and enforceable accordingly (*Hall* v. *Potter* (1869), 39 L. J. M. C. 1; 34 J. P. 515).

Notice was given to the appellant and five others requiring them to sewer, pave, etc. the parts of a street in front of their premises within a specified time. Five of the owners executed the works, but the appellant made default. The board thereupon did the work, and, the surveyor having made an apportionment, gave her notice accordingly. It was held that the board were not bound before executing the work to give the appellant a fresh notice specifying the particular works remaining to be done by her (*Simcox* v. *Handsworth L. B.* (1881), 8 Q. B. D. 39; 46 J. P. 260. In this case it was argued that the notice was not a separate notice to each owner to do the work opposite his own premises, but was a notice to all the owners in respect of the entire work. But GROVE, J., in delivering the judgment of the court, said it was not meant that each owner may be called upon to execute the whole. And see *Wakefield Sanitary Authority* v. *Mander* (1880), 5 C. P. D. 248; 44 J. P. 522, the facts of which are stated in note (*n*), *post*, p. 312. But see, on the other hand, *Handsworth U. D. C.* v. *Derrington*, [1897] 2 Ch. 438; 61 J. P. 518; and *Lancaster* v. *Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405, where WILLS, J., said: "The notice is a general one: it is a notice to all the owners collectively to make up the street generally. No one ever saw a notice under s. 150 calling upon each owner to make up that part only which was opposite his own house." See also *Leeds* (*Lord Mayor, etc. of*) v. *Armitage*, *ante*, p. 297, and *Denman* v. *Finchley U. D. C.*, p. 303, *post*.

No provision is made in this Act for the owners to object to the notice. Such a provision exists in the Private Street Works Act, 1892 (see *post*), and was to be found also in 26 & 27 Vict. c. 70, s. 10 (see *R.* v. *Livesey* (1870), 34 J. P. 645; 22 L. T. 470, as to the result of not taking objection at the proper time under that section).

Where a local board had duly proceeded under the Act, and had sewered, etc. a new street, and no notice had been given by an owner that he disputed the apportionment, it was held that it was still open to him to dispute his liability, and to show that the street was a highway repairable by the inhabitants at large (*Hesketh* v. *Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149; and see other cases cited therewith on p. 306, *post*).

Premises *extra commercium.*

(*g*) **Premises Fronting, Adjoining, or Abutting.**—As "ownership" is defined (s. 4) by reference to receipt of rack-rent, "where land is incapable of yielding a rack-rent by reason of its being subjected to some public user, the owner is not liable; for instance, where it has been dedicated as a highway, or where a church has been built upon it which has been consecrated according to English law for public worship, or where it has been appropriated by Act of Parliament to some public purpose. But, when the incapacity is created in favour of an individual or of a particular class of persons, then the owner does not escape liability; for instance, where the owner has covenanted not to use the land for any purpose of profit, or where he has voluntarily devoted it to a purpose which is inconsistent with the

receiving of rent . . . The reason for the distinction seems to be that, in the one case, nothing short of an Act of Parliament can restore the land to its capacity to yield a rent, whereas, in the other case, the capacity can be restored by the mere act of the parties who for the time being have destroyed it" (*per* BIGHAM, J., in *Hampstead Corporation* v. *Midland Rail Co.*, [1904] 2 K. B. 802; 68 J. P. 574; affirmed, [1905] 1 K. B. 538; 69 J. P. 133). The premises in question in the following cases were held to fall within the first category: *Angell* v. *Paddington Vestry*, *ante*, p. 10; *Plumstead Board of Works* v. *British Land Co.*, *ante*, p. 11, and *post*, p. 303; *G. E. Rail. Co.* v. *Hackney Board of Works*, *ante*, p. 12; *London C. C.* v. *Wandsworth Borough Council*, *ante*, p. 14; *Macey* v. *Executors of James*, *ante*, p. 12. The premises in question in the following were held to fall within the second category: *Bowditch* v. *Wakefield L. B.*, *ante*, p. 13; *Pound* v. *Plumstead Board of Works*, *ante*, p. 11, and *post*, p. 302; *Wright* v. *Ingle*, *ante*, p. 11; *St. Giles, Camberwell* v. *London Cemetery Co.*, *ante*, p. 13; *Meyrick* v. *Att.-Gen.*, *ante*, p. 12; *Hornsey U. D. C.* v. *Smith*, *ante*, p. 13; *Hackney Corporation* v. *Lee Conservancy Board*, *ante*, p. 13; *Hampstead Corporation* v. *Midland Rail. Co.*, *ante*, p. 12; and *Herne Bay U. D. C.* v. *Payne*, *ante*, p. 14. *Angell* v. *Paddington*, *supra*, was a case of a church, and *Wright* v. *Ingle*, *supra*, of a Wesleyan chapel; but churches and chapels are for the purposes of this section expressly provided for by s. 151, *post*, p. 316. **Note to Section 150.**

For definition of *premises*, see s. 4, *ante*, p. 7. The term includes *land*. A railway in a metropolitan district was carried across a new street by an arch. On one side of the street the railway was carried forward on arches, and on that side a strip of land, left open for the purpose of repairing the arches, abutted for ten feet on the street. On the other side the railway was carried forward on an embankment; the sloping part of the embankment abutted on the street about thirty feet, and at the foot of the embankment were open spaces also abutting on the street, left for the purpose of allowing for slips of the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land* abutting on it (*Higgins* v. *Harding* (1872), L. R. 8 Q. B. 7; 37 J. P. 677). This case may be usefully compared with *L. B. and S. C. Rail. Co.* v. *St. Giles', Camberwell* (1879), 4 Ex. D. 239. In that case a line of railway was situate in a deep cutting at a place where a road was carried across it on a bridge. The bridge was supported on stone piers erected on the slopes of the cutting. It was held that neither the railway under the bridge nor the slopes of the cutting could be said to abut on the road. Where a railway ran in a cutting alongside a new street which the vestry were about to pave, being separated from it by a wall, through which there was no communication between the street and the railway, it was held that the railway *bounded* or abutted upon the street (*L. & N. W. Rail. Co.* v. *St. Pancras* (*Vestry of*) (1868), 17 L. T. 654; followed in *Caledonian Rail. Co.* v. *Magistrates of Edinburgh* (1901), 3 F. 645). All these cases as to railway cuttings were discussed and approved by the House of Lords in a case where a railway company carried a road over a deep cutting by means of a bridge. The road having been paved by the board of works as a new street, the company were called upon to contribute to the cost of paving. It was held that the parapets of the bridge, though the property of the company, were not land of which they were "owners" for the purposes of the section; and that the slopes and bottom of the cutting did not "abut on or bound" the new street (*G. E. Rail. Co.* v. *Hackney District Board of Works* (1883), 8 App. Cas. 687; 48 J. P. 52; reversing 9 Q. B. D. 412; 46 J. P. 532). The decision of the House of Lords as to the parapet walls may perhaps be regarded as based on an application of the maxim *de minimis non curat lex*, for the decision in *L. & N. W. Rail. Co.* v. *St. Pancras*, *supra*, was approved. (See hereon *Hackney Corporation* v. *Lee Conservancy Board*, [1904] 2 K. B., *per* COLLINS, M.R., at p. 552.) Decisions as to railway property.

The decision in the *Great Eastern Case* was distinguished in *Cameron* v. *Caledonian Rail. Co.* (1904), 6 F. 763. There by a local Act, liability for paving a street was imposed upon all "lands or heritages" in it or fronting or adjoining both sides of the line thereof. A railway company, in order to carry their line under the street at right angles, bought and demolished houses on each side of the street; they then excavated the ground to form a cutting, and carried the roadway across on a bridge; this bridge with its parapets and steps leading down to a station in

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the cutting, was the property of the company. It was held that the company were owners of property "adjoining" the street.

Where the Private Street Works Act, 1892, is in force, see s. 22 thereof for special provisions as to railway property.

Premises outside district or contributory place.

A local authority sought to recover from certain owners apportioned expenses incurred in the execution of works in a road not repairable by the inhabitants at large. The boundary of the authority's district ran along the kerb of one footpath, the carriageway and the footpath on the south side being within the authority's district, and the footpath on the north side being in the neighbouring urban district. The premises of the owners in question abutted on the footpath on the north side, and were wholly within the neighbouring district. The works were executed on the roadway and on the footpath on the south side; and it was sought to make the owners in question equally liable with the frontagers on the south side for the expense of making up the roadway. It was held that the authority had no power to apportion any part of the cost on frontagers not within their district (*Mayor, etc. of Hornsey* v. *Birkbeck Freehold Land Society*, [1906] 1 K. B. 521; 70 J. P. 140). See *R.* v. *Cheshire JJ.* (1909), 73 J. P. 499; 101 L. T. 683, for a case where part of a street lay in a contributory place to which s. 150 had not been applied by order of the L. G. B. *Cf.* also *R.* v. *Warner* (1858), 27 L. J. M. C. 144; *Shoreditch Borough Council* v. *Wakeham* (1905), 69 J. P. 239. The L. G. B. expressed the opinion that there is no provision in the P. H. A., 1875, which would enable two councils to carry out a joint scheme for the making up of a street so situated at the cost of the owners. The boundary may be altered under the L. G. A., 1888, s. 54 or s. 57, with the object of getting over the difficulty.

Premises "in" or "forming" a street.

A local Act empowered commissioners to pave streets and recover the expenses by rates from the occupiers of houses, etc., "situated or being within any of the streets" in the district. It was held that houses and buildings in a yard communicating with a street by a covered gateway, which houses and buildings abutted on houses in the street, were situated *within the street* so as to be liable to the rates (*Baddeley* v. *Gingell* (1847), 1 Ex. 319; 11 J. P. 838). This decision was followed in *London School Board* v. *St. Mary, Islington* (*Vestry of*) (1875), 1 Q. B. D. 65; 40 J. P. 310. In that case the school board were charged as owners of a school-house which did not immediately front the street, but stood back some seventy feet in a large yard, the whole area being about 29,500 square feet. There was a row of eleven small houses with gardens at the back of them between the yard and the street; but the only access to the school was by a private passage which ran along one side of the last house and garden into the yard, with gates opening from the street in question, the width of the passage being twenty feet and the length about sixty-four feet. It was held that the school-house, though not actually one of the houses "forming" the street, yet practically formed part of it, so as to render the board liable as owners for the paving expenses. The court held that benefit of access to the street was the foundation of the liability. But an opinion was expressed that this principle would not apply to the case of an old-established court, the access of which was common to the public and open to every one who liked to go in. The last-mentioned case was decided under the rather different words of the Metropolis Management Acts.

The owner of land adjoining a highway has a legal right of access to it at any point where it adjoins his premises. See *St. Mary, Newington* (*Vestry of*) v. *Jacobs* (1871), L. R. 7 Q. B. 47; 36 J. P. 119; *Marshall* v. *Ulleswater Co.* (1871), L. R. 7 Q. B., at p. 172; 36 J. P. 583; *Chaplin* v. *Westminster* (*Mayor, etc. of*), [1901] 2 Ch. 329; 65 J. P. 661; *Rowley* v. *Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97, and *Cobb* v. *Saxby*, [1914] 3 K. B. 822; 83 L. J. K. B. 1817. See also *Ramuz* v. *Southend L. B.* (1892), 67 L. T. 169; *Peache* v. *Wimbledon L. B.* (1893), Times, July 17th, December 18th; in C. A., Times, April 23rd, 1895; *Att.-Gen.* v. *Furness Rail. Co.*, Times, July 5th 1897; and as to point of access to an occupation road, see *Pettey* v. *Parsons* (1914) 2 Ch. 653; 84 L. J. Ch. 81. As to vehicles crossing over pavements, see *St. Mary, Newington* v. *Jacobs*, and *Rowley* v. *Tottenham U. D. C.*, *supra*, and s. 18 of the P. H. A., 1907, *post*.

Possibility of access.

There can be no liability under s. 150 if intervening land of a third person precludes possibility of access to the street; but, if there be no intervening strip, the fact that the street is private (and therefore cannot be used as of right unless

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or until it becomes a highway) appears to afford no defence (*Walthamstow U. D. C.* v. *Sandell, infra: cf. Moubray Rowan and Hicks* v. *Drew*, [1893] A. C. 295).

Paving expenses must be apportioned among all the owners of premises fronting, adjoining, or abutting on the street in proportion to the frontage, without any reference to direct or consequential benefit, which the Act assumes to be proportioned to the frontage. Therefore, a railway and canal company whose premises lay along one side of a street were held liable to pay their proportion of the expenses, although they had no immediate access to the street (*R.* (or *Powell*) v. *Newport L. B.* (1863), 3 B. & S. 341). So, too, the owner of ground at the end of a street forming a *cul-de-sac* was held liable under a local Act to pay the expenses of paving, notwithstanding that a wall divided his property from the street, which wall, however, he might at any time have removed wholly or partially so as to open access to the street (*Manchester* (*Mayor, etc. of*) v. *Chapman* (1868), 37 L. J. M. C. 173; 32 J. P. 582; see also *Newport Sanitary Authority* v. *Graham, infra: Dodd* v. *St. Pancras Vestry* (1870), 34 J. P. 517; *Sheffield* v. *Fulham District Board of works* (1876), 1 Ex. D. 395). In another case, premises facing W. street were divided from D. street by a small stream, but were connected with it by two bridges over the stream All communication with the street could be closed by gates. One of the bridges had been moved and reinstated by the owner of the premises. It was held that the premises fronted, adjoined, or abutted on D. street (*Wakefield L. B.* v. *Lee* (1876), 1 Ex. D. 336; 41 J. P. 54).

In a Scotch case under a similar Act it was held that the upper flat of a tenement held with a plot of garden fronting A. street on the west, and bounded by B. street on the north, was premises abutting on B. street, although the only entrance was from A. street (*Campbell* v. *Edinburgh Magistrates* (1891), 19 Ct. Sess, Cas. (4th ser.) 159).

An owner of premises abutting on a *cul-de-sac* passage was held liable to pay his apportioned share of the costs incurred in making it up, although he had at the time no door into the passage from his premises (*Walthamstow U. D. C.* v. *Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835).

B. owned a house which had its front and only entrance in F. street, and behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, alongside the dead wall at the end of B.'s garden. It was held that B.'s land abutted on this new street (*Paddington* (*Vestry of*) v. *Bramwell* (1880), 44 J. P. 815). A. owned three houses facing Y. place, and abutting at the rear upon a footpath at the end of a *cul-de-sac* called St. J. street. The ground at the back of these houses was five feet above the level of St. J. street, and the wall, which was A.'s property, was about 12 feet high on the outside. There was no access from A.'s premises to St. J. street. It was held that his premises adjoined or abutted on St. J. street within this section (*Newport Sanitary Authority* v. *Graham* (1882), 9 Q. B. D. 183; 47 J. P. 133). CAVE, J., said: "If it had been shown that the wall at the end of St. J. street did not belong to the respondent, or that a strip of land intervened between his premises and the street, they would not have been adjoining or abutting."

W. having a strip of land about four inches wide and 265 feet long abutting on the north side of a street, had erected a boundary fence upon the land along its whole extent, under a covenant to erect, and for ever after maintain, such a fence made with his vendor, who was owner of the land adjoining the strip on the north side. It was held that W. was the owner of the strip of land, and, as such, liable for paving expenses (*Williams* v. *Wandsworth Board of Works* (1884), 13 Q. B. D. 211; 48 J. P. 439, followed in *Scott* v. *Investors' Property Corporation* (1904), 68 J. P. N. 352; *cf. Elsdon* v. *Hampstead Corporation*, [1905] 2 Ch. 633; 69 J. P. 434; and *Hampstead Borough Council* v. *Western* (1907) 71 J. P. 565; *Hall* v. *Bolsover U. D. C.* (1909), 73 J. P. 140; 100 L. T. 372). The court pointed out in *Williams* v. *Wandsworth Board of Works, supra*, that, in the event of the owner of the adjoining property desiring to have access to the street, the strip would command a considerable rent. It was therefore capable of being let at a rack-rent. In *Leith Magistrates* v. *Gibb* (1882), 9 Ct. of Sess. Cas. (4th ser.) 627, the owner of property, which was separated from a street by a wall which belonged to some one else, was held not to be liable as the owner of property "fronting or abutting" on

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such street. The LORD PRESIDENT said there must be access, or an undoubted right of access, from the property sought to be charged to the street.

As to boundary walls in joint ownership, see *L. & S. W. Rail. Co.* v. *Blackmore* (1870), L. R. 4 H. L. 610, 618; 35 J. P. 324; *Watson* v. *Gray* (1880), 14 Ch. D. 192; 44 J. P. 537.

A. B. owned plots of land, with cottages thereon, separated from a street by a wall five feet high, which belonged, with the land on which it stood, to another person. A public footway ran between the plots of land and through an opening in the wall into the street about its middle. The backs only of the cottages fronted the street, and the only way for vehicles from the cottages to the street was by a small roadway, which, without touching that part of the street which had been paved, came into a highway which joined one end of such street. With the exception of the public footway, this roadway was the only access from the cottages to the street. It was held by the Court of Appeal that A. B. was not the owner of premises "fronting, adjoining, or abutting" on the street within the meaning of this section (*Lightbound* v. *Higher Bebington L. B.* (1885), 16 Q. B. D. 577; 50 J. P. 500).

"Abutting," "adjoining," etc.

In *Barnett* v. *Covell* (1903), 68 J. P. 93; 90 L. T. 29, it was held that "abutting means "in actual contact with." See this case distinguished in *Rockleys* v. *Pritchard* (1909), 74 J. P. 11; 101 L. T. 575; and see also, as to the meaning of the word "abut," *London C. C.* v. *Collins* (1905), 69 J. P. 401; 93 L. T. 540, *per* RIDLEY, J.; *R.* v. *S. E. Rail. Co.* (1909), 74 J. P. 137; 54 Sol. J. 233; and *Stockport Corporation* v. *Rollinson* (1910), 74 J. P. 236; 102 L. T. 567. With reference to the word "adjoining," BOWEN, L.J., said (in *Lightbound's Case, supra*): "You cannot define 'adjoin' as meaning benefit of access, or vice versâ, but in considering whether houses adjoin which are placed in close proximity to the part of the street which is to be paved, it is a most important fact, and, in many cases, a dominant fact, to see whether there is a substantial access and advantage which the houses enjoy from that portion of the street which is to be paved, and a substantial access and advantage of that kind, coupled with close proximity, may bring the case within the word 'adjoin' though there is no actual touch." Ordinarily, the word "adjoining" is to be read as equivalent to "actually contiguous, with nothing between." See *per* PARKE, B., in *R.* v. *Hodges* (1829, 1 Moo. & M., at p. 344; *Vale* v. *Moorgate Street, etc. Buildings* (1899), 80 L. T. 487; *Withington L. B.* v. *Manchester (Corporation of)*, [1893] 2 Ch. 19, 57 J. P. 340, *per* CHITTY, J. *Haynes* v. *King*, [1893] 3 Ch. 439; 69 L. T. 855, and *Ind, Coope & Co.* v. *Hamblin* (1900), 84 L. T. 168). In a colonial case "adjacent" was contrasted with "adjoining," and was held to include places close to or near (*Wellington (Mayor of)* v. *Lower Hutt (Mayor of)*, [1904] A. C. 773). Nevertheless, premises separated from some point by an intervening road or a house may, in some circumstances, be treated as "adjoining." See *In re Bateman and Parker's Contract*, [1899] 1 Ch. 599; 63 J. P. 345; *Cave* v. *Horsell*, [1912] 3 K. B. 533, distinguished in *Derby Motor Cab Co., Ltd.* v. *Crompton, etc. Bank* (1913), 29 T. L. R. 673.

Benefit of access in the case of premises not fronting, adjoining, or abutting on the street or part of a street to be paved, etc. is especially provided for under the Private Street Works Act, 1892, *post*. See s. 10 of that Act.

Soil of side streets.

The soil of private roads leading out of a new street was held to be "land bounding or abutting on such street" in *Pound and Lord Northbrook* v. *Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 36 J. P. 468. But in this case Lord N. had determinately reserved the property in the roads to himself. He had not dedicated them to the public, and nothing that he had done was past recall. In a subsequent case, this decision was distinguished. There the defendants, a land company, being owners of certain lands in 1863, laid them out for building purposes and made roads across them, and nearly the whole of the estate was sold in lots to different purchasers. Each lot had a frontage upon one of the roads. The roads had been dedicated to the public, as far as any act of the defendants could do so, but no proceedings were taken to make them repairable by the parish. The plaintiffs, the board of works for the district, from time to time paved the new streets formed by the houses on the estate, and apportioned the cost among the owners of houses forming the streets and the owners of land bounding and abutting on the street. In so doing they charged the defendants in respect of the new streets or roads when these bounded

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or abutted on the sides or ends of the streets paved, as being lands abutting on those streets. It was held by the Exchequer Chamber that, assuming the property in the soil of the roads to be in the defendants, they were improperly charged, for they were not in respect of roads which had been irrevocably dedicated to the public the owners of land within the meaning of the section (*Plumstead Board of Works* v. *British Land Co.* (1875), L. R. 10 Q. B. 203; 39 J. P. 376; reversing L. R. 10 Q. B. 16; 39 J. P. 133; and see *Stretford U. D. C.* v. *Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 19 T. L. R. 546, *per* the VICE-CHANCELLOR of the Country Palatine of Lancaster). The decision in *Plumstead Board of Works* v. *British Land Co.*, *supra*, is illustrative of the principle referred to, *ante*, at p. 298, that premises cannot be charged unless thay are capable of yielding a rack-rent. It must be observed, however, as to *Pound and Lord Northbrook* v. *Plumstead Board of Works*, *supra*, that 25 & 26 Vict. c. 102, s. 77, makes the owners of houses and land in the street liable not only for the work done to the street proper, but for the paving, etc. to the intersections of the streets. This provision is not contained in the text, and it remains to be decided whether in an urban district the owners of the soil of a street (not dedicated to the public) abutting on a street within this section can be charged with a proportion of the expenses of paving, etc. the latter.

Means of lighting.

(*h*) **Means of Lighting.**—See note (*e*), p. 294, *ante*, as to these words and generally as to what work an authority may require frontagers to do.

Time limit for frontagers to do work.

(*hh*) On Nov. 17th, 1911, the frontagers of C. street received notices requiring them to make up the street, and, amongst other things, make connections with the sewer, within six weeks. At that time contractors were at work making up another road, to which C. street was the only access; and accordingly the plaintiff, after informing the authority of that fact, and that he proposed, with the consent of the other frontagers, to make up the whole of the road himself, waited until the work in the other road was finished. In March, 1912, such work being finished, he began the work in C. street, but the authority refused to supply the levels, or to co-operate unless he signed an agreement as to the making up of the street which they alleged he had agreed to enter into after the six weeks specified in the notice had run out. On May 1st the work was ready for the connections with the sewers to be made, but upon the plaintiff requesting the authority to make the same, they refused to do so, or to allow him to do so, on the ground that the works were not being done under the notice and that the agreement had not yet been signed. The plaintiff made a connection, which the council cut off. The plaintiff then issued a writ for an injunction, and subsequently an arrangement was come to by which the council made the connections at the plaintiff's expense:—*Held*, that the council had never intervened after the expiration of the six weeks or given definite notice of their intention to do so; that the plaintiff had bonâ fide endeavoured to comply with the notice; that there had been no unreasonable delay on his part; that he was entitled to have the connections made when he called upon the council to make them; and that the defendants must pay the costs of the action (*Denman* v. *Finchley U. D. C.* (1912), 76 J. P. 405; 10 L. G. R. 697).

The time specified in the notice within which the work shall be completed must be a reasonable time and must take into account the nature and extent of the work and the time which ought fairly and reasonably to be allowed for the completion of that work, under all the circumstances. The least time that can fairly and reasonably be allotted for the completion of the work, being ascertained, is the least time to be inserted in the notice; there is a discretion to allow further time for the completion of the work, but not to fix any shorter time (*Bristol Corporation* v. *Sinnott*, [1918] 1 Ch. 62; 82 J. P. 9. In that case a local authority served a notice under this section on frontagers of part of a street 1450 feet long, to sewer, level, pave, etc. the same within one calendar month. The frontagers did not commence the works nor object to the validity of the notice, and after three months the local authority began the works and completed them within four months, and served the frontagers with the usual demand for payment. In an action to recover payment, after an appeal to the L. G. B., which was later withdrawn and no order made by the Board, it was held that the notice was bad in not specifiying a reasonable time for the execution of the works, and that the local authority could not recover the expenses from the frontagers. And see also *Macclesfield Corporation* v. *Governors of Free*

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Grammar Sch. of King Edward VI., [1921] 2 Ch. 189 ; 90 L. J. Ch. 477 for another decision on the question of reasonable time and where *Bristol Corporation* v. *Sinnott*, *supra*, was considered.

Deposit of plans : whether directory only.

(*i*) **Deposit of Plans.**—It has been held that the deposit of these plans is not a condition precedent to the recovery of the expenses from the owners (*Cook* v. *Ipswich L. B.* (1871), L. R. 6 Q. B. 451 ; 35 J. P. 565 : *per* BLACKBURN, J.). It should be observed, however, that in this case the plans were in fact deposited, though at the office of an official instead of at that of the authority, and, moreover, they were actually inspected. In *Shanklin L. B.* v. *Millar* (1880), 5 C. P. D. 272 ; 44 J. P. 635, a county court judge held that paving expenses could not be recovered from a frontager on the ground that the opportunities afforded to him for inspecting the deposited documents were not reasonable, the byelaws of the local board having provided that their office should be open only on Mondays and Thursdays from 10 till 3. The High Court reversed this decision on the ground that the provision as to deposit of plans was directory only, and not a condition precedent to the recovery of the expenses. In a later case, MANISTY, J., expressed the view that the provisions of the section as to deposit of plans were not merely directory (*Manchester Corporation* v. *Hampson* (1887), 35 W. R. 334, 591). It has been held that the omission to follow the plans in every respect does not affect the right to recover ; see *Acton L. B.* v. *Lewsey* and cases cited therewith, *post*, p. 307. A notice given under this section must, however, state that the plans are deposited at the offices of the local authority, and that they are open to inspection, unless the notice gives specific and precise details of the works to be done (*Stourbridge U. D. C.* v. *Butler and Grove*, [1909] 1 Ch. 87 ; 73 J. P. 3).

Contractor not affected by invalidity of notices.

(*k*) **Execution of Works by Urban Authority.**—Owners having made default, the local board of M. contracted with W. to do the work for them, the contractor to be paid for the work when the money was collected from the frontagers. By inadvertence the board had given bad notices, and were, therefore, unable to collect the money. W., having done the work, sued the board for the amount due to him by the contract. It was held that he was entitled to recover, as an undertaking must be implied on the part of the board that they were in a position to collect the money and pay it over to him (*Worthington* v. *Sudlow* (1862), 26 J. P. 453 ; 2 B. & S. 508). In another case the plaintiff had in 1858 entered into contracts with a local board for the execution of works under this section, to be paid for out of money to be collected from the frontagers. The contracts were duly performed by the plaintiff. The notices given by the board turned out to be bad, and many frontagers refused to pay the sums assessed upon them. This became known to the plaintiff in 1860, and he then demanded payment. The board were in hopes of being able to collect the money, notwithstanding the invalid notices, and by November, 1860, £800 was collected and paid over to the plaintiff, leaving a balance due of more than £3,000. The plaintiff sued for this sum and obtained judgment, and within six months afterwards commenced an action claiming a writ of *mandamus* commanding the board to levy a rate to satisfy the judgment. It was held that the delay in commencing the original action was reasonable, and that a peremptory writ might be granted (*Worthington* v. *Hulton* (1865), L. R. 1 Q. B. 63).

Before entering into a contract for the execution of work under this section, it is not necessary to obtain an estimate from the surveyor as to future repairs under s. 174 (3), *post*, p. 397 ; nor is such report as is there mentioned a condition precedent to the right to recover the amounts apportioned on the several owners (*Cunningham* v. *Wolverhampton L. B.* (1857), 21 J. P. 262 ; 7 El. & Bl. 107).

Power to agree with frontagers.

As to the power of an authority to agree with one or more owners to execute the works without observing the formalities required by the section, see *Hall* v. *Batley* (*Corporation of*), *ante*, p. 86. That case was decided with reference to s. 23, but the principle laid down in it appears to be equally applicable to this section. LUSH, J., said : " It is not permitted to them (the authority) arbitrarily to interfere and do the work at the owner's expense without first giving him the opportunity of doing it himself. But if they were to do so he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and surely the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." And s. 257, *post*, evidently contemplates

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that there are works which may be done by agreement with the owner, so as to make the expenses recoverable from him and a charge on the premises as therein provided. In *Lewis* v. *Cardiff Urban Sanitary Authority* (1878), 47 L. J. M. C. 101, an owner having received notice to pave, indorsed on the notice an authority to the local board to execute the works, and an undertaking to pay the costs on completion. On default of payment after demand, the board proceeded to recover the expenses in a summary manner. It was held that the owner, having by the submission indorsed on the notice admitted the right of the authority to issue such notice, could not require proof before the justices of the fulfilment of the conditions precedent to the existence of such right. It was held, however, that the owner could not by such submission give jurisdiction to the authority if in fact they had none, but that he did thereby waive proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to dispute it. It was, therefore, open to him to show that the street was a highway repairable by the inhabitants at large. See further hereon *Mayor, etc. of Folkestone* v. *Marsh*, and *Mayor, etc. of Folkestone* v. *Rook*, cited in the notes to s. 146, *ante*, p. 268.

It must be noticed that the authority have a discretion as to whether they will execute the works or not. See *Denman* v. *Finchley U. D. C.*, p. 303, *ante*, as to the position where frontagers have begun to do the works required before the authority take any steps in the matter.

See p. 296, *ante*, as to altering the respective widths of roadway and footpath, and see p. 307, *post*, as to departures from the deposited plans.

See the P. H. A., 1907, s. 28, *post*, as to the removal of materials in streets. The section will only be operative where it has been applied by an order of the L. G. B.

Loans.

The M. of H. are willing to entertain applications for sanction to loans for the execution of private street works repayable within the period which it is proposed to allow the owners for the payment of their apportionments. The Ministry rarely, however, allow a longer period than seven years for the repayment of such loans. Applications of this kind should be deferred until the period allowed to owners for the carrying out of the works has expired and default has been made.

As to the liability of the authority for any negligence of their contractor in executing the work, see the cases cited in the notes to s. 265, *post*.

Statutory remedy is exclusive.

(*l*) **In a Summary Manner.**—See s. 251, *post*. Where a statute provides a particular method of recovering such expenses, an action will not lie, the remedy given by the statute being exclusive (*St. Pancras (Vestry of)* v. *Batterbury* (1857), 21 J. P. 424; 2 C. B. (N.S.) 477. And see *Lamplugh* v. *Norton* (1889), 22 Q. B. D. 452, 456; 53 J. P. 389; *Re Boor, Boor* v. *Hopkins* (1889), 40 Ch. D. 572, 576; 53 J. P. 467; *G. W. Rail. Co.* v. *Sharman* (1892), 61 L. J. Q. B. 600; 40 W. R. 643). A special Act incorporating the Railways Clauses Consolidation Act, 1845, and the Towns Improvement Clauses Act, 1847, provided that certain expenses incurred by commissioners in paving streets, etc. might be recoverable as damages. An action having been brought to recover expenses so incurred, it was held that it was not maintainable, the proper construction of the several Acts being, that the expenses were to be recovered as damages before justices under s. 140 of the Railways Clauses Consolidation Act, 1845 (*Blackburn (Mayor of)* v. *Parkinson* (1858), 28 L. J. M. C. 7; 23 J. P. 262). But this Act provides for the recovery of amounts below £50 in the county court (s. 261), and makes the amount a charge on the premises (s. 257).

This section does not create the relationship of debtor and creditor between an owner and the authority. The only means of recovering the expenses are those provided by the Act. Therefore, a summons for leave to prove in an administration action for the amount awarded was dismissed in *West* v. *Downman* (1880), 14 Ch. D. 111. And see *Re Boor, Boor* v. *Hopkins, supra*. In *Eccles* v. *Wirral R. S. A.* (1886), 17 Q. B. D. 107; 50 J. P. 596, MATHEW, J., said: "By s. 261, jurisdiction is conferred on the county court in cases of this kind, when the amount is below £50, and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above £50, an action would lie in the superior court." But this *dictum* was delivered without reference to the cases above cited, and there are *dicta* in later cases that no action lies in the superior court for the recovery of these expenses. See *Willesden L. B. and Wright, In re*, [1896] 2 Q. B. 412; 60 J. P. 708; *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496.

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In the case of expenses incurred under the Private Street Works Act, 1892, *post*, a right of action in any court of competent jurisdiction is given by s. 14.

As to the several methods of enforcing payment of these expenses under this Act, see the notes to s. 257, *post*, and especially the judgment of BRETT, L.J., in *Tottenham L. B.* v. *Rowell*, there quoted at length.

Summary proceedings having been taken against an owner for payment of his proportion of expenses, justices ordered him in default of distress to be imprisoned with hard labour. As they had no power to do so, quarter sessions on appeal quashed the order without going into the merits. Afterwards the authority obtained a new order to pay the same amount. It was held that the justices had jurisdiction to make the new order, the former having been quashed as null and void (*Lister* v. *Hebden L. B.* (1878), 42 J. P. 119).

Orders having been obtained by a local board against A. and L., for payment of paving expenses under this section, it was agreed that the order against L. should not be enforced for three months, in order to enable a case to be stated on a point of law. At the same time an understanding was come to that the order against A. should abide the decision in L.'s case. L., instead of taking his case to the Queen's Bench, went before quarter sessions, and the order against him was quashed on a technical ground (see *Lister* v. *Hebden L. B.*, *supra*). A. was not informed of the course taken by L., and the three months having expired within which she should have appealed, the local board obtained a distress warrant against her to enforce payment. On motion by A. to restrain the board from enforcing payment until she had had an opportunity of stating a case for the opinion of the Court of Queen's Bench, it was held that the court had power to restrain the board, and on A. undertaking to consent to a case and to pay the money into court, the injunction was granted (*Ashworth* v. *Hebden Bridge L. B.* (1877), 47 L. J. Ch. 195; 37 L. T. 496).

Jurisdiction of court: defences available.

The court cannot entertain any question as to whether the work was necessary or proper under the circumstances, that being for the local authority to decide (*Bayley* v. *Wilkinson* (1864), 16 C. B. (N.S.) 160; *Cook* v. *Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565. And see *Chelsea* (*Vestry of*) v. *Evans* (1870), 35 J. P. 23). They may, however, inquire into the original liability of the persons charged; for example, they may and ought to decide whether the street is or is not a highway repairable by the inhabitants at large (*Hesketh* v. *Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149. And see to the same effect *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; *Eccles* v. *Wirral R. S. A.* (1886), 17 Q. B. D. 107; 50 J. P. 180; *Cleckheaton L. B.* v. *Burnup* (1886), 50 J. P. 598; *Lewis* v. *Cardiff Urban Sanitary Authority*, *ante*, p. 305). An objection that a street is a highway repairable by the inhabitants at large may properly be raised in proceedings to enforce payment of the expenses, for it goes to the jurisdiction of the authority to execute the work at the expense of the frontagers (*Walthamstow L. B.* v. *Staines*, [1891] 2 Ch. 606). If, however, there is any ground of liability, and the objection only goes to the extent of that liability and the principle upon which it is to be determined, the justices or other court cannot entertain the objection in proceedings to enforce payment. Thus, in *Ex parte Wake*, *R.* v. *Recorder of Sheffield* (1883), 12 Q. B. D. 142; 48 J. P. 197, a frontager objected that the plans referred to in the notice showed that part of the work was executed upon land belonging to private owners. It was held that as part of the work was executed in a street, the magistrate could only order payment of the apportioned sum, and the frontager's only remedy was by appeal to the L. G. B. under s. 268. The decision of the local board in determining to do the work was only erroneous, and not without jurisdiction. See, however, *Bell* v. *Great Crosby U. D. C.*, p. 291, *ante*, as to how such an objection can be raised under the Private Street Works Act, 1892. *Ex parte Wake*, *supra*, was followed in *Derby* (*Mayor, etc. of*) v. *Grudgings*, [1894] 2 Q. B. 496; 58 J. P. 685. There the owner of premises fronting on a street having failed to comply with a notice under this section to sewer, etc., the authority did the work, and took proceedings before justices to recover the sum apportioned on him. The owner had given no notice under s. 257 disputing the apportionment within the specified time. At the hearing of the complaint it was shown that the carriageway of the street was a highway repairable by the inhabitants at large, but that the footway on which the owner's premises fronted was not. It was held on the authority of *Wake's Case* that the authority had jurisdiction to give the notice and make the apportionment in

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respect of the footway, and that the owner having failed to dispute the apportionment under s. 257, it was conclusive against him, and he could not at the hearing before the justices dispute his liability to pay any part of the apportioned sum. In another case the objection taken before the justices was that part of the work (exceeding £50 in value) had been done by a contractor without a sealed contract, and it was urged that a payment under such a contract was illegal. SMITH, J., pointed out that the objection, if valid, could not be raised in this way (*Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87; 49 J. P. 102). So it is not open to a frontager to say that, while rightly assessed for certain premises, he has also been assessed for others which do not front or adjoin the street. Such an objection goes merely to the amount of the apportionment, and should be taken by way of objection to the apportionment under s. 257. "It was argued that there was an excess of jurisdiction by the surveyor in respect of part of the sum apportioned. But it seems to me that if he had jurisdiction to make an apportionment against the appellants, which it is admitted he had, then the only possible objection is that he has made such apportionment incorrectly; but that is only an erroneous exercise of jurisdiction, not an excess of jurisdiction. If he had made an apportionment on a person who was not a frontager in respect of any land, there would be an excess of jurisdiction, but that is not the present case" (*per* Lord ESHER, M.R., in *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D., at p. 40). The result of the cases appears to be that an objection may be taken before justices that the defendant is not liable to pay anything, on the ground that he is not a frontager, or that the place is not a street, or that the place is a highway repairable, etc. Objections as to amount are not cognisable by the justices; they may be raised by an appeal to the M. of H. under s. 268, *post*, and in some cases also (see p. 313, *post*) by objection to the apportionment under s. 257. See *Eccles* v. *Wirral R. S. A.*, *ante*, p. 306. "There can be no doubt that an apportionment under s. 150 is not conclusive of every defence which can be set up when the frontager is called upon to pay. He may say that the place is not a street, or that he has no premises fronting on the street, or that the place is a highway repairable by the inhabitants at large. He may set up all those defences, and, as it seems to me, any other defence which offers an answer to the whole of his legal liability. But where the question is only as to the amount of his liability, then the apportionment, if not challenged under s. 257, is conclusive" (*per* CHARLES, J., in *Derby* (*Mayor, etc. of*) v. *Grudgings*, [1894] 2 Q. B., on p. 504). These cases must be regarded as superseding the judgment of BACON, V.-C., in *West* v. *Downman* (1880), 14 Ch. D. 111. In *Walthamstow L. B.* v. *Staines*, *ante*, p. 306, the court seemed to think, and in *Hanwell U. D. C. and Smith, In re*, *post*, p. 309, it was expressly decided that the only way of raising an objection to the legality of *part* of the expenses (such as legal expenses, collection, etc.) was by way of appeal to the L. G. B. (now M. of H.) under s. 268. See also hereon *Sandgate L. B.* v. *Keene*, and the other cases (including the *Hanwell Case*), noticed in connection therewith at p. 312, *post*.

As to the effect of a decision that a street is a highway repairable by the inhabitants at large, see *R.* v. *Hutchins*, the facts of which are set out, *ante*, p. 294, and *cf.* the cases cited therewith, which were, however, decided on other Acts.

The justices cannot inquire into the reasonableness of the expenditure or whether it has been incurred in point of fact. Nor is it a good objection before justices that the notices required the street to be paved in a particular way, that the plans differed from the notice, and the work done from both. These are only matters of appeal to the M. of H. under s. 268, *post* (*Cook* v. *Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565). It has been held by the House of Lords that the omission strictly to follow the terms of their own notice does not prevent the authority from recovering from the owner his proportion of the expenses incurred (*Acton L. B.* v. *Lewsey* (1886), 11 App. Cas. 93; 50 J. P. 708). In that case the notice required the owner to pave part of a street, specifying the materials and mode, and (*inter alia*) requiring him to lay down concrete. The owner having made default, the local authority did his work, but, finding that the concrete would be an unnecessary expense, omitted it.

An authority gave notice to K., an owner of land adjoining a new street, to sewer the road, and lay an eighteen-inch pipe. Whilst carrying out the work upon his default they found a twelve-inch pipe sufficient, and used it, and thus saved expense to K. on the apportionment. It was held that the magistrate was right in holding

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that the apportioned expenses of the altered work were recoverable, the alteration not being a material matter nor invalidating the notice (*Kershaw* v. *Sheffield* (*Corporation of*) (1887), 51 J. P. 759). An authority served notices on frontagers requiring them to sewer a street as therein specified. On default the authority carried out more extensive sewage works, but including the work necessary for drainage of the street itself, and apportioned on the frontagers part of the cost of the more extensive works, being the amount which it would have cost to sewer the street in accordance with the notices. It was held that the amount so apportioned was recoverable (*Acton U. D. C.* v. *Watts* (1903), 67 J. P. 400; 1 L. G. R. 594).

Time limit for proceedings.

The provisions of the S. J. A., 1848, s. 11, which limit the time within which proceedings can be taken before justices to a period of six months from the time when the matter of complaint arises, apply to the recovery of these expenses by summary proceedings; and the six months cannot begin to run till after the expiration of the three months during which the apportionment may be disputed under s. 257, *post* (*Jacomb* v. *Dodgson* (1863), 27 J. P. 548; 3 B. & S. 461). See also *Wilson* v. *Bolton* (*Mayor of*) (1871), L. R. 7 Q. B. 105; 36 J. P. 405, *per* LUSH, J.; and *West* v. *Downman* (1880), 14 Ch. D. 111). Where a notice of apportionment was a nullity, and a second and valid notice was afterwards given, it was held that the time did not begin to run until after the second notice (*Sykes* v. *Huddersfield* (*Mayor, etc. of*) (1871), 35 J. P. 614). And the same limitation applies also to proceedings in the county court under s. 261, *post*. Therefore it was held that expenses could not be recovered by a county court action brought more than six months after the expiration of the three months allowed for disputing the apportionment (*Tottenham L. B.* v. *Rowell* (1876), 1 Ex. D. 514, following *West Ham L. B.* v. *Maddams* (1876), 1 Ex. D. 516 n; 40 J. P. 470, and see *Metropolitan Water Board* v. *Bunn*, [1913] 1 K. B. 134; 77 J. P. 156, 353). But it must not be assumed that at the expiration of nine months from the date of the notice of apportionment the expenses cease to be recoverable summarily, or in the county court under s. 261. Before any proceedings can be taken to recover them it is necessary that a demand of payment should be served upon the owner, and the time runs from the date of such demand, and not from that of the notice of apportionment, which is not a sufficient demand (see s. 257, *post*; *Grece* v. *Hunt* (1877), 2 Q. B. D. 389; 41 J. P. 356). The court pointed out that this decision was not inconsistent with *Jacomb* v. *Dodgson*, *supra*, for in that case there had been a demand at the expiration of the three months after the notice of apportionment. It may be reconciled with the other cases cited for the like reason. Consequently, there is no limitation of the time within which proceedings, whether summary or in the county court, must be taken unless a demand is made. and the demand may apparently be made at any time after the expiration of three months from the date of the notice of apportionment. Therefore, under the Metropolis Management Acts, when works were done and the amount apportioned in June, 1876, but no demand was made until December 31st, 1878, it was held that a summons for payment issued on May 14th, 1879, was in time (*Marr* v. *Greenwich Board of Works* (1880), 44 J. P. 424; *Wortley* v. *St. Mary, Islington* (*Vestry of*) (1886), 51 J. P. 166; *Prescott* v. *Nicholson* (1889), 53 J. P. 597; 60 L. T. 563). See also, as to the necessity for a demand for apportioned expenses in the metropolis, and as to the date upon which the Statute of Limitations, if it runs at all, begins to run, *Hampstead Corporation* v. *Caunt*, [1903] 2 K. B. 1; 67 J. P. 344).

The six months' limitation does not apply to the enforcing of the charge on the premises given for such expenses by s. 257, *post* (*Tottenham L. B.* v. *Rowell* (1880), 15 Ch. D. 378). Such a charge may be enforced by proceedings commenced within twelve years after the completion of the works (*Hornsey L. B.* v. *Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391).

In *West Derby L. B.* v. *Bell* (1878), 42 J. P. 812; 27 Sol. J. 125, work had been done under this section, and notice of apportionment was served on March 29th, 1878. On the same day a demand was served. Proceedings to recover the amount were instituted in the county court on October 7th, 1878, and it then transpired that a second demand had been made on August 6th. The judge held that the first demand was premature and a nullity, as there was no liability to pay until the expiration of the three months after notice of apportionment. The second demand was, therefore, a good one, and the proceedings were in time. This he considered to be the result

of *Grece* v. *Hunt*, *supra*. As for *Wilson* v. *Bolton* (*Mayor of*), *post*, p. 314, there the notice of apportionment and the demand had been served at the same time, but no objection was taken in argument on that ground, and so far as it was inconsistent with *Grece* v. *Hunt*, he considered it to be overruled. The correctness of this decision was established in *Simcox* v. *Handsworth L. B.* (1881), 8 Q. B. D. 39; 46 J. P. 260. It was there held that the notice of apportionment concluding with a demand of payment was not a notice of demand within s. 257, and that time did not begin to run from such demand. And in *Re Bettesworth and Richer's Contract* (1888), 37 Ch. D. 535; 52 J. P. 740, NORTH, J., said: "It is quite true that the owner cannot be compelled to pay till the total costs have been made out and apportioned between the owners, and notice has been served and he has had three months to dispute the apportionment, and at the end of the three months has had written demand served upon him." **Note to Section 150.**

If the complaint to recover the expenses is made in time, it is no objection to the validity of a summons that it is issued more than a year after such complaint (*Simcox* v. *Handsworth L. B.*, *supra*). Of course, if a valid demand has been made and the time has therefore begun to run, it will not be extended by making a second or subsequent demand (see *Harpin* v. *Sykes* (1885), 49 J. P. 148).

Upon justices declining to make an order for payment the authority obtained a special case. The respondent took no part in its statement, and did not appear in support of the justices' decision. The court decided in favour of the appellants, and it was held that the respondent might be ordered to pay the costs of the appeal (*Wednesbury L. B.* v. *Stephenson* (1864), 33 L. J. M. C. 111; 28 J. P. 261). In a later case it was held that where it is the duty of a public body to take proceedings of a civil nature before justices, and the defendant raises an untenable point which succeeds, then, although he does not appear on the argument of a special case, it was proper that costs should be allowed against him (*Usk U. D. C.* v. *Mortimer* (1904), 68 J. P. 38). Special case.

It was held that when owners were liable for paving expenses under the Metropolis Management Acts, the vestry could not, in their discretion, charge the expenses upon the general rates (*Dryden* v. *Putney* (*Overseers of*) (1876), 1 Ex. D. 223; 40 J. P. 263; and see *Taylor* v. *Oldham* (*Corporation of*) (1876), 4 Ch. D. 395, *per* JESSEL, M.R.). Accordingly, a district board were ordered to restore to the general rate an amount so expended, and to levy the same upon the owners of the adjoining houses and land according to the Acts (*Att.-Gen.* v. *Wandsworth District Board of Works* (1877), 6 Ch. D. 539). See also *Folkestone Corporation* v. *Rook*, *ante*, p. 268. Authority cannot relieve frontagers of liability.

For a case in which a local board were held to be estopped by the terms of their notice from proceeding summarily, see *Gould* v. *Bacup L. B.*, on p. 315, *post*.

As to the right to recover from a local authority sums paid under this section by mistake, see *Midland Rail. Co.* v. *Withington L. B.* (1883), 11 Q. B. D. 788; 47 J. P. 789; *Moore* v. *Fulham Vestry*, [1895] 1 Q. B. 399; 59 J. P. 596; *Self* v. *Hove Commissioners*, [1895] 1 Q. B. 685; 59 J. P. 103.

(*ll*) A metropolitan district board were held entitled to recover as costs incidental to paving, etc., the cost of serving apportionments, obtaining names of owners, collection of amounts, advertisement and printing expenses (*Poplar Board of Works* v. *Love* (1874), 38 J. P. 246; 29 L. T. 915). But this decision was given with reference to the Metropolis Management Act, 1862, s. 77, which enables the authority to recover incidental costs and charges, and in a recent case the court held that the words "all other incidental costs and charges" included only out-of-pocket expenses and charges (*Ballard* v. *Wandsworth Borough Council* (1906), 70 J. P. 331; 95 L. T. 118). In the text the sum which may be recovered seems to be confined to the expenses of executing the work, and *quære* whether this includes incidental expenses such as those above mentioned. In *Walthamstow L. B.* v. *Staines*, *ante*, p. 306, CHITTY, J., thought it was within the power of the authority to charge for preparation of contract and plans, 4 per cent. for incidental expenses and 4 per cent. for cost of collection. The Court of Appeal doubted whether these expenses could be charged, but did not decide the point. In *Hanwell U. D. C. and Smith*, *In re* (1904), 68 J. P. 496, CHANNELL, J., expressed the opinion that an authority were not entitled to make a charge of 5 per cent. to cover office and other incidental expenses. It would appear to follow also from the decision in *Ballard* v. *Wandsworth Borough Council*, *supra*, that an authority will not be justified in including a percentage in respect What expenses may be included in apportionment.

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of their officers' time and labour. See an express provision in the Private Street Works Act, 1892, s. 9, *post.*

(*m*) **Owners in default.**—See notes (*f*) and (*g*), *supra.*

Owners in default.

Expenses under s. 150 cannot be recovered from one who, though the owner of premises when notice was first given by the authority, has ceased to be owner before the completion of the works (*R.* v. *Swindon L. B.* (1879), 4 Q. B. D. 305; 43 J. P. 431). "I cannot think it was ever intended by the legislature that when the owner has parted with his property, and somebody else is in possession of it, and therefore getting the benefit of the work done, and who ought, therefore, to pay the expenses incurred, it should be competent for the local authority to follow him up wherever he may have gone and hold him personally liable. I think that defect is remedied by s. 257, which treats owners upon whom notice was originally served and who are owners at the time the work is completed, and the expenses demanded, as the persons upon whom the local board shall be able to come for the expenses" (*per* COCKBURN, L.C.J.). These words were explained by NORTH, J., in *Re Bettesworth and Richer's Contract* (1888), 37 Ch. D. 535; 52 J. P. 740). He pointed out that in *R.* v. *Swindon L. B.* the same person was owner, both when the work was completed and when the demand was made. But he held that when there was a change of ownership after the completion of the works and before demand, the liability was upon the person who was owner when the works were completed. In that case leasehold houses in an urban district, abutting partly on a private road, were sold on an open contract. At the date of the sale, works had been done by the local board under this section. The final demand for payment of the sum apportioned in respect of the premises was served after the purchase ought to have been completed. It was held that the apportioned expenses became a charge on the premises at the date of the completion of the works, and as between the vendor and purchaser they were payable by the vendor. Compare with this decision *Egg* v. *Blayney* (1888), 21 Q. B. D. 107; 52 J. P. 517, a case as to the expenses of paving a new street in the metropolis, where such expenses are not a charge on the premises. It was held therefore, that if the owner sells the premises while the expenses are unpaid and conveys as beneficial owner, and the purchaser is compelled to pay the expenses, he cannot recover from the vendor under the implied covenant against incumbrances. See also *Re Field*, W. N. (1888), p. 36; and the observations on *Re Bettesworth and Richer's Contract* in *Hornsey L. B.* v. *Monarch Investment Society* (1889), 24 Q. B. D. 1; 54 J. P. 391. *R.* v. *Swindon L. B.* was distinguished in *Tottenham L. B.* v. *Williamson* (1893), 62 L. J. Q. B. 322; 57 J. P. 614, where it was held that under the provisions of a local Act (53 & 54 Vict. c. cxliv), the person who received the rack-rent at the date of the estimation and apportionment of the expenses was liable, notwithstanding that he had ceased to be the owner of the premises within the meaning of the local Act and s. 4 of this Act incorporated therewith before the completion of the works. See also *Belfast Corporation* v. *Hill*, [1904] 2 I. R. 105. The dictum of COCKBURN, L.C.J., in the *Swindon Case*, *supra*, was at length expressly disapproved by the Court of Appeal in *Millard* v. *Balby-with-Hexthorpe U. D. C.*, [1905] 1 K. B. 60; 69 J. P. 13. There the appellant was the owner of certain premises in June, 1899, and as such had served upon him a notice under s. 150. The respondents, upon his default, executed the work, which was completed in December, 1901. Formal notice of the apportionment was served on the appellant in November, 1902, and on May 20th, 1903, a demand for payment was served upon him. In April, 1902, he had ceased to be the owner of the premises. It was held that as he was the owner of the premises when the works were completed, he was liable to pay the amount apportioned in respect thereof. In a later case it was held that a person who was the owner of premises at the date of the completion of the work was liable, although he was not the owner of the premises when the notice requiring the works to be executed was served and although he had ceased to be owner prior to service of notice of apportionment and demand for payment (*East Ham U. D. C.* v. *Aylett*, [1905] 2 K. B. 22; 69 J. P. 205). In *Re Lewis* (1908), 42 Ir. L. T. 210, compensation was allowed to a purchaser in respect of an outstanding sanitary notice not disclosed to him.

The Metropolis Management Act, 1862, ss. 77 and 96, make paving expenses recoverable by action from the present or future owners of the premises, or from any person who then or thereafter occupies the premises. The vestry of B. had

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recovered a judgment against a former owner of premises in respect of such expenses, which remained unsatisfied. It was held that such judgment was no bar to a subsequent action against the defendant, who occupied the premises as tenant to a succeeding owner (*Bermondsey* (*Vestry of*) v. *Ramsey* (1871), L. R. 6 C. P. 247; 35 J. P. 567). Under the same Act it was held that the expenses might be recovered from the mortgagee in possession as owner, notwithstanding that another person was owner at the date when the work was resolved upon, and that the amount could be recovered from future owners, although there had been no arrangement to accept payment by instalments (*Plumstead District Board of Works* v. *Ingoldby and Others* (1873), L. R. 8 Ex. 63, 174; 37 J. P. 759). See also *Hampstead Corporation* v. *Caunt*, *ante*, p. 308, as to the liability of future owners in the metropolis. As to the liability of "successive owners" under a local Act, see *Blackburn* (*Corporation of*) v. *Micklethwait* (1886), 50 J. P. 550; 54 L. T. 539.

The Crown is not bound by the provisions of this section. Therefore land owned and occupied for Crown purposes is exempt (*Hornsey U. D. C.* v. *Hennell*, [1902] 2 K. B. 73; 66 J. P. 613 (volunteer headquarters); *cf. Dellar Bros., Ltd.* v. *Drury*, [1912] 2 K. B. 209; 76 J. P. 239, as to territorial force property). See also upon the general question of statutes which do, or do not, bind the Crown, *Cooper* v. *Hawkins*, [1904] 2 K. B. 164; 68 J. P. 25; *Gorton Local Board of Health* v. *Prison Commissioners*, [1904] 2 K. B. 165 n; 68 J. P. 27; *Edinburgh Corporation* v. *Lord Advocate*, [1912] S. C. 1085, and *Chare* v. *Hart* (1919), 83 J. P. 54; 17 L. G. R. 233.

Apportionment: power to amend or substitute a new one.

(*n*) **Apportionment.**—An apportionment was made and notice given to an owner that his proportion was £20 2*s*. In answer to a summons for payment, he objected that the apportionment was bad, on the ground that the expenses of two streets had been lumped together, and the aggregate amount divided among the owners in the two streets; and the justices dismissed the complaint on that ground. The surveyor then made a fresh apportionment, and a notice was served on the owner that his proportion was £19 11*s*. He gave notice that he disputed the apportionment, and the matter came before justices under a section corresponding to s. 181, *post*, p. 432. On a case stated, it was held that the first apportionment was a nullity, and that the surveyor, not being *functus officio*, was right in making a fresh apportionment (*Cook* v. *Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565). An apportionment was signed by B., who was not then surveyor, having been superseded previously. The authority on discovering the mistake treated it as a nullity, and issued a fresh apportionment signed by their actual surveyor. It was held that they had acted properly (*Sykes* v. *Huddersfield* (*Mayor, etc. of*) (1871), 35 J. P. 614). Where a local Act required the proportion in which expenses were to be apportioned to be ascertained and settled by the corporation, it was held that the fact that the apportionment had been corrected by their surveyor after it had been approved by them did not invalidate it (*St. Helen's* (*Corporation of*) v. *Riley* (1883), 47 J. P. 471). An authority acting under this section served the defendant and other frontagers with notices requiring them to execute works including certain work which could not be legally included in such notices. The notices not being complied with, the authority did the works, and apportioned the expenses among the frontagers. A summons to recover from the defendant £650, the amount charged to him, having been dismissed by the magistrates, the authority made a second apportionment, excluding the expenses of the work which had been wrongly included, the amount charged to the defendant therein being £579. They then brought an action under s. 257 to establish a charge on the defendant's premises for £579, or in the alternative for £650:—*Held*, that the authority had power to make a second apportionment, and that, notwithstanding the dismissal of the summons, they were entitled to a charge for £579 (*Manchester* (*Mayor of*) v. *Hampson* (1886), 35 W. R. 335, 591). See also as to the jurisdiction to make a second apportionment, *Bishop* v. *Wandsworth District Board* (1900), 69 L. J. Q. B. 632; 64 J. P. 630; *Elsdon* v. *Hampstead Borough Council*, [1905] 2 Ch. 633; 69 J. P. 434. The decision in *Cook* v. *Ipswich L. B.* was considered in *Shanklin L. B.* v. *Millar* (1880), 5 C. P. D. 272; 44 J. P. 635. In that case the apportionment was made in respect of five roads. The defendant had taken no steps to dispute the apportionment, and when proceedings against him were instituted in the county court he contended that the apportionment was bad in law. On a case stated, the High Court held that the defendant was liable. DENMAN, J., referring to the former decision, said that it was not intended to decide

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"that an apportionment which is otherwise good on the face of it, is necessarily a nullity, and may be treated as such in any court before which it may come, because two streets instead of one are included in the apportionment; but the court meant this, viz., that when that is the case, and the parties have come to the conclusion that the apportionment cannot be enforced and the surveyor makes a fresh apportionment, the former one becomes a nullity in the sense that it cannot be enforced, and is useless for particular purposes and cannot stand in the way of a good apportionment. That is, to my mind, the full extent of the decision, and it is not a decision that, if no steps are taken to set aside or dispute the apportionment on the ground that the party charged is not liable, it may be treated as a nullity when it comes before the court." See also *Ex parte Wake; R.* v. *Recorder of Sheffield*, and *Derby* (*Mayor, etc. of*) v. *Grudgings*, cited *ante*, p. 306, for discussions of *Cook* v. *Ipswich L. B.* It appears from these cases that an apportionment, if made in respect of the paving, etc. of more than one street, may be objected to under s. 257, *post*; but that, if this is not done, the owner is liable for the amount apportioned.

Two or more houses or plots belonging to one owner must not be grouped together in the apportionment; a share of the cost must be apportioned on each separately (*Croydon R. D. C.* v. *Betts*, [1914] 1 Ch. 870).

Apportionment on one side only of street.

Premises belonging to the defendants abutted upon a new street which a metropolitan vestry paved for half its breadth only, the side paved being that nearest the defendants' premises. The vestry apportioned the whole cost of paving upon the premises on the defendants' side of the street, omitting those on the other side. It was held that the apportionment was invalid, for the owners on both sides ought to have been charged (*Mile End* (*Vestry of*) v. *Whitechapel* (*Guardians of*) (1876), 1 Q. B. D. 680; 40 J. P. 565, affirming 45 L. J. M. C. 75). But this was a decision under the Metropolis Management Act, 1862, s. 77, which imposes liability on the owners of houses forming the street, and on the land bounding and abutting on such street. The language used in the text is different; and where an authority paved a footpath on one side of a street, and apportioned the cost among the owners on that side only, it was held that the apportionment was right (*Wakefield Urban Sanitary Authority* v. *Mander* (1880), 5 C. P. D. 248; 44 J. P. 522). See, however, the Private Street Works Act, 1892, s. 10, *post*, and a case decided thereon (*Clacton-on-Sea L. B.* v. *Young*, [1895] 1 Q. B. 395). And see now as to the metropolis, the Metropolis Management Act, 1862, Amendment Act, 1890, and *Paddington Vestry* v. *North Metropolitan Railway and Canal Co.*, [1894] 1 Q. B. 633; 58 J. P. 413; *White* v. *Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; *Property Exchange, Ltd.* v. *Wandsworth Board of Works*, *post*, p. 315. See also *Evans* v. *Newport Urban Sanitary Authority* and the other cases cited therewith at p. 315, *post*, as to the method of apportionment when a strip is added to a road already repairable by the inhabitants at large.

It has been decided under the Private Street Works Act, 1892, that all the premises in a street must be included in the apportionment although some of them are *extra commercium* and have therefore no "owners" (*Herne Bay U. D. C.* v. *Payne*, [1907] 2 K. B. 130; 71 J. P. 282). This decision has, however, no application to an authority proceeding under s. 150, under which the total expenses should be divided amongst the persons who are statutory "owners," and can be made to contribute. See 71 J. P. N. 337.

Time for making apportionment.

There does not appear to be any limit to the time within which an apportionment must be made (*Bradley* v. *Greenwich District Board of Works* (1878), 3 Q. B. D. 384; 42 J. P. 725). But delay in making the apportionment will not extend the time for bringing an action to enforce the charge on the premises under s. 257. Such an action must be brought within twelve years after the completion of the works. See *Hornsey L. B.* v. *Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391.

Notice of dispute.

(*o*) **Arbitration.**—Section 257, *post*, limits the time within which notice of any dispute is to be given. See *Hesketh* v. *Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149.

If a notice is given disputing the apportionment, no proceedings can be taken to recover the expenses of the works until the dispute has been determined by arbitration (*Sandgate L. B.* v. *Keene*, [1892] 1 Q. B. 831; 56 J. P. 484).

An owner, on receiving notice of apportionment, sent to the authority a letter

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which appeared to be rather an objection to the prime cost of the work than to the mode in which that prime cost was apportioned; but it was held that as the letter was treated by the authority in letters to the owner and in a resolution, as a good notice disputing the apportionment, it must be regarded as such, and that the authority were bound to go to arbitration before commencing an action to recover the apportioned amount. Another owner disputed the claim of the authority in general terms, and this was held a good notice (*Folkestone (Mayor, etc. of)* v. *Brooks; Same* v. *Ladd*, [1893] 3 Ch. 22; 58 J. P. 53). Where, however, an owner takes up the position that the authority have no jurisdiction at all to charge him with the expenses of making up a street, there is no *dispute* which must first go to arbitration (*West Hartlepool (Mayor, etc. of)* v. *Robinson* (1897), 62 J. P. 35; 77 L. T. 387).

Jurisdiction of arbitrator.

The arbitration here referred to has reference not to a dispute between the frontagers generally on one side, and the authority on the other, but to one in which the owner of a particular set of premises complains of the apportionment as regards himself personally. There must be as many separate arbitrations as there are disputing owners, for every disputing owner may appoint an arbitrator. Therefore, an award between one of several frontagers called upon to pay the expenses of paving a street and the authority, by which the arbitrator has altered not merely the assessment upon the particular frontage, but the assessment in regard to all the frontages, is not binding upon a frontager not a party to the arbitration, so as to entitle the authority to recover from him the sum which would be due from him on the footing of the altered assessment (*Tunbridge Wells L. B.* v. *Akroyd* (1880), 5 Ex. D. 199; 44 J. P. 504).

The text only authorises an arbitration in respect of the proportion to be borne by a defaulting owner, and not in respect of any question as to the expenses being reasonable or properly incurred by the authority (*Bayley* v. *Wilkinson* (1864), 33 L. J. M. C. 161; 10 L. T. 543); and see also *Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511; 79 J. P. 201. Nor can the arbitrator inquire into details of the total amount certified by the surveyor (*Cawston* v. *Bromley U. D. C.* (1900), 64 J. P. 760; 17 T. L. R. 25). When a dispute as to the apportionment comes before justices as arbitrators under s. 181, *post*, p. 432, and equally when the matter comes before them on a complaint to enforce payment, they have no jurisdiction to inquire into the question whether the amount alleged has been actually incurred. If the appellant is aggrieved by the alleged overcharge, his remedy is by appeal to the M. of H. under s. 268, *post* (*Cook* v. *Ipswich L. B.*, *ante*, p. 307). In *Sandgate L. B.* v. *Keene*, *ante*, p. 312, and in *Bournemouth Commissioners* v. *Watts*, *ante*, p. 307, there are *dicta* suggesting that an arbitrator may deal with any dispute that may arise, but in a later case the Court of Appeal decided that he has only jurisdiction to fix the amount, and cannot fix the liability (*Willesden L. B. and Wright, In re*, [1896] 2 Q. B. 412); and see *Hanwell, U. D. C. and Smith, In re* (1904), 68 J. P. 496, where CHANNELL, J., decided that the only power which an arbitrator has is to divide up the total sum which the authority have decided to be the cost of the work, and that he has no jurisdiction to entertain objections to the total cost of the work, as given by the surveyor to the authority. See also *dicta* of the Court of Appeal to the same effect in *Ex parte Wake*, *ante*, p. 306, and *Walthamstow L. B.* v. *Staines*, *ante*, *p.* 306. See, on the other hand, *Handsworth U. D. C.* v. *Derrington*, [1897] 2 Ch. 438; 61 J. P. 518, where it was held by KEKEWICH, J., that if the proportion of the expenses was referred to arbitration, all objections to the validity of the proceedings of the authority on the ground of insufficient notice, such as neglecting to serve every frontager, or otherwise, must be raised before the arbitrators, and that it is too late to raise them by action or other proceeding on the award. *Cf.*, however, *Hesketh* v. *Atherton L. B.* (1873), L. R. 9 Q. B. 4, where it was held that the question of highway or no highway could not be raised before an arbitrator. The owner of two properties adjoining each other and abutting on a street, received a notice under s. 150. The notice referred only to one of the two properties. Upon his default the authority executed the works in the street adjoining both properties. The apportionment of the expenses only referred to the one property, though the owner's share of the expenses was calculated on the frontage of both. The owner having disputed the apportionment, the arbitrator held that it was bad, and that the owner's share should be reduced to a sum proportionate to the frontage of the one property to which the notice and the apportionment had referred. It was held that he had jurisdiction to

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so award (*Thomas* v. *Hendon R. D. C.* (1911), 75 J. P. 161 ; 9 L. G. R. 234). Under similar provisions in Ireland it has been held that an arbitrator cannot give effect to a frontager's claim that, where no footpath is provided on his side of the street, he ought not to be charged in respect of the opposite footpath, but only in respect of the roadway ; in such a case the frontager should appeal to the L. G. B. (now M. of H.) (*Bangor U. D. C.* v. *McKee* (1914), 48 Ir. L. T. 92). If there has been no arbitration an objection may be taken to the sufficiency of a notice on proceedings for the recovery of expenses (*Stourbridge U. D. C.* v. *Butler*, [1909] 1 Ch. 87 ; 73 J. P. 3). It has been held with reference to the Metropolis Management Acts, 1855 and 1862, that the principle upon which the expenses have been apportioned cannot be questioned before any tribunal (*Nesbitt* v. *Greenwich District Board of Works* (1875), L. R. 10 Q. B. 465 ; 39 J. P. 582 ; *Stotesbury* v. *St. Giles, Camberwell* (*Vestry of*) (1888), 57 L. J. M. C. 114 ; 53 J. P. 5 ; *Davis* v. *Greenwich District Board of Works*, [1895] 2 Q. B. 219 ; 59 J. P. 517 ; *Metropolitan District Rail. Co.* v. *Fulham Vestry*, [1895] 2 Q. B. 443 ; 59 J. P. 679). See, however, *R.* v. *Marsham*, [1892] 1 Q. B. 371 ; 56 J. P. 164 ; and *Elsdon* v. *Hampstead Corporation*, [1905] 2 Ch. 633 ; 69 J. P. 434.

It will be seen, on reference to s. 268, that a frontager may, if he pleases, refrain from having recourse to arbitration, and in lieu thereof make complaint to the M. of H. within twenty-one days from the "decision" of the authority. A notice to pave and a notice of apportionment are not, but a demand of payment is, a "decision" within the meaning of that section (*R.* v. *Local Government Board* (1882), 9 Q. B. D. 600 ; 46 J. P. 820 ; affirmed (1882), 10 Q. B. D. 309 ; 47 J. P. 228 ; *Ex parte Wake ; R.* v. *Recorder of Sheffield ; Bournemouth Commissioners* v. *Watts*, *ante*, p. 306).

For the provisions of this Act as to arbitration, see s. 179, *post*, p. 425. An award under this section cannot be summarily enforced under the Arbitration Act, 1889, s. 12 (*Re Willesden L. B. and Wright*, [1896] 2 Q. B. 412 ; 60 J. P. 708). Nor (*semble*) can an action be brought upon it (*ibid.*).

Private improvement expenses.

(*p*) **Private Improvement Expenses.**—See s. 213, *post*.

The construction of this clause is not clear, and it has been interpreted in two ways. Some consider that the declaring the expenses to be private improvement expenses should be done in respect of each separate premises ; in other words, that an apportionment should be made in any case in order to determine the extent to which each owner is liable according to the frontage of his premises. Upon this being done, the expenses so determined may either be recovered from the owners, or may be declared to be private improvement expenses in any one or more cases. The amount actually recovered from an owner would thus be the same, whether he had to pay the sum apportioned on him at once, or by means of a private improvement rate. This opinion is based on the ground that the object of the section is to impose a liability according to frontage, and that s. 215, which enables any owner to redeem private improvement expenses, implies that the expenses, so far as he is concerned, have been already fixed and determined. It is also argued that s. 257 contemplates an apportionment in every case, and that the contrary opinion deprives him of the important rights which the statute confers as to disputing the apportionment. The other view is that the authority have a discretion either to apportion in the ordinary way according to frontages, or to take the total expenses, ascertain the sum payable in each year with the addition of interest, and then make a rate upon the several premises according to their rateable value, frontage as an element in determining liability being rejected altogether. This opinion is supported by the punctuation of the clause, and it is not unworthy of observation that the language of the clause differs from that in the P. H. A., 1848, s. 69. It is by no means easy to decide between the two possible constructions. In the absence of express authority an opinion must be advanced with hesitation ; but it is submitted on the whole that the first is the more correct construction. The two following cases, in so far as they bear upon the point, are in favour of this view.

A local board demanded from an owner his proportion of the expenses in January, 1861. This amount not having been paid on August 25th, 1870, the board resolved that it should be declared private improvement expenses ; and in September, 1870, they declared it to be payable by annual instalments. It was held that the demand in 1861 amounted to an election to treat the amount due as a debt from the owner, and that they had no power to declare it to be private improvement expenses (*Wilson*

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v. *Bolton* (*Mayor, etc. of*) (1871), L. R. 7 Q. B. 105; 36 J. P. 405). An authority gave a notice in the form in Sched. IV., Form G, but added to it words to the effect that if the owner neglected to do the work they would do it, and declare the expenses to be private improvement expenses. It was held that they were estopped by the terms of their notice from taking summary proceedings for the recovery of the expenses (*Gould* v. *Bacup L. B.* (1881), 50 L. J. M. C. 44; 45 J. P. 325).

Part of road repairable by inhabitants at large.

(*q*) **Part of Road Repairable by Local Authority.**—The meaning of the paragraph was thus explained in *Maude* v. *Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644, by POLLOCK, B.: "Its effect is not to say that wherever there is a (public) footpath running parallel the rest of the ground is in such a case to be deemed a street. It merely means to say that in all those cases in which the magistrates could properly find the residue to be a street, that power of so finding is not to be taken away in consequence of the fact that there is a public footpath."

In proceedings under this section it appeared that the street was formed by an old footpath and strips of land alongside, which had been recently added to widen it. The old footpath was repairable by the inhabitants at large. The justices found that the road was in part an ancient footpath or highway, but that it had been altered, widened, and added to, and that houses having been built abutting thereon it was a street within the meaning of the section; that the frontagers were liable to contribute to the expenses of improving it; and an order was accordingly made for payment by the frontagers of such expenses. It was held that having regard to the terms of the section, the frontagers were chargeable with the expenses of improving the whole street, and not merely such part of it as had been added to the ancient highway (*Evans* v. *Newport Urban Sanitary Authority* (1889), 24 Q. B. D. 264; 54 J. P. 374). In 1883, the owners of an estate, through which ran an ancient highway about thirty feet wide, repairable by the inhabitants at large, agreed with the borough council, that as and when the estate should be laid out for building the owners would straighten and lay out the road so as to make it forty feet wide throughout. The agreement recited that it was entered into for the purpose of settling a question which had arisen as to the extent of the public rights over the road. When the whole of the road had been laid out in accordance with the agreement, the council made it up, and sought to recover the expenses from the owners of premises abutting on the road. JOYCE, J., held that the agreement did not constitute a purchase of the land thrown in to widen the road; and consequently, having regard to the latter part of s. 150, that the frontagers were chargeable with the expenses of improving the whole road and not merely such parts of it as had been added to the ancient highway (*Portsmouth Corporation* v. *Hall* (1907), 71 J. P. 299; 97 L. T. 43). This decision was reversed on appeal (71 J. P. 564; 98 L. T. 513), it being held that the agreement amounted to a purchase by the council under s. 154, and that the defendant was not liable for any expenses under s. 150. A street, sixteen feet wide, in the metropolis, had been a highway from the year 1815, and had become an "old street." On the south side were a number of cottages; the street was paved on that side, and from time to time substantial repairs were done to it; the frontagers on the north side took no part in the acts of repair. In 1898 a new strip of land, twenty-four feet wide, was dedicated to the public on the north side, houses were built on that side, and the authority paved the new part of the street and made an apportionment upon the frontagers on the north side only. The magistrate found, and the Divisional Court upheld his view, that the added strip on the north side was itself a separate "new street," with the result that the paving expenses were thrown upon the owners of property abutting on that new street. On appeal, it was held (following *Richards* v. *Kessick*, *ante*, p. 288, and *White* v. *Fulham Vestry*, *ante*, p. 294) that the paving expenses were thrown only upon the owners of property abutting on the north side of the new strip, whether under the Metropolis Management Acts or the Public Health Act (*Property Exchange, Ltd.* v. *Wandsworth Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435). See also the argument in *Chorley Corporation* v. *Nightingale*, [1906] 2 K. B. 612; 70 J. P. 500 (affirmed on appeal on a point not material in this connection, [1907] 2 K. B. 637; 71 J. P. 441), and a considered judgment of the Leeds stipendiary magistrate (Mr. C. M. Atkinson), at 71 J. P. N. 53.

In *Chorley Corporation* v. *Nightingale*, *supra*, it was held that there is no rule of law that a ditch running alongside a road between the *via trita* and the fence cannot

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be dedicated as part of the highway; that whether it is part of the highway or not is a question of fact; and that where it is found that such a ditch has been included in the dedication, then upon its being filled up, and made available for passage, the road ought not to be treated as a street which consists partly of an old highway and partly of an added strip, so as to constitute a street of which "only a part" is repairable by the inhabitants at large, and therefore one in respect of which frontagers are liable for paving expenses under this section. From this case it would also appear that in construing the final paragraph of s. 150, the maxim *de minimis* may be applied.

In *Chippendale* v. *Pontefract R. D. C.* (1907), 71 J. P. 231, a county court judge found as a fact that the ditch there in question did not form part of the highway. Where a highway has been laid out under an award and is, exclusive of the ditches, still of the prescribed width, there is no presumption that either ditch forms part of the highway (*Simcox* v. *Yardley R. D. C.* (1905), 69 J. P. 66; 3 L. G. R. 1350). See also *Walmsley* v. *Featherstone U. D. C.* (1909), 73 J. P. 322; 7 L. G. R. 806, where it was held that the site of a ditch piped and filled up nine years before by the council with the owner's consent (to prevent accidents to persons walking on the footpath at night) had not been dedicated to the public.

It is difficult to reconcile with the cases which decide that strips of land added to a highway may be made up at the expense of the frontagers, a statement of Lord ALVERSTONE, C.J., in *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135, to the effect that a strip of land added by an adjoining owner to an old highway and paved by him, and which the public had the right to use as a public footpath, was vested in the local authority. The land could only so vest under s. 149, *ante*, p. 273, if a highway *repairable by the inhabitants at large*. This statement was not however, necessary to the decision: and see a criticism by WARRINGTON, J., and the judgments of the Court of Appeal in *Andrews* v. *Abertillery U. D. C.*, [1911] 2 Ch. 398; 75 J. P. 449.

The fact that, owing to the proviso to the section, the authority might as to a street, a part whereof is repairable by the inhabitants at large, put into operation their powers under this section, will not prevent them from being indicted under the Highways and Locomotives (Amendment) Act, 1878, s. 10, if the part repairable by the public is allowed to fall into disrepair (*Rex* v. *Crompton U. D. C.* (1902), 66 J. P. 566; 86 L. T. 762).

Exemption from expenses under last section of incumbent of church, etc.

151. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor (*a*), shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress, execution or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted (*b*).

This section does not apply to a district in which the Private Street Works Act, 1892, has been adopted. See s. 25 of that Act, *post*; but a similar exemption is contained in s. 16 thereof.

Exemption of churches, etc., from poor rate.

(*a*) The statute exempting from poor rate churches and chapels is 3 & 4 Will. 4, c. 30. By it "no person or persons shall be rated, or shall be liable to be rated, or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act or Acts now in force: Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of

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any parts of such churches, district churches, chapels, meeting-houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage" (s. 1). "Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting-houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor" (s. 2). See 18 & 19 Vict. c. 81, as to the certifying of places of religious worship, and 32 & 33 Vict. c. 40, s. 2, for a definition of Sunday school.

Churches were immune from rates prior to the passing of the above statute, and its object was to extend the same immunity to chapels, etc. In *Winstanley* v. *North Manchester Overseers*, [1910] A. C. 7; 74 J. P. 49, a churchyard or burial ground had been acquired under the Church Building Acts, at a distance of about 300 yards from the church. It was held (1) that the rector who received fees in respect of such burial ground was the "occupier" of it for rating purposes and was liable to be rated in respect thereof; and (2) that the burial ground was not exempt from rates under the Act of 1833.

A burial ground "not attached to" any church or chapel is not exempt under this section, though partially exempt from poor or local rates under 18 & 19 Vict. c. 128, s. 15.

Effect of the section.

The text only exempts an incumbent or minister; therefore, trustees, other than the incumbent or minister, will be liable. The defendants were the trustees of a chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purposes of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members; but the money received did not cover the cost of the entertainments. A bazaar and sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to the defendant B., and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under s. 150 requiring them to pave the street upon which the chapel abutted, the complainants executed the work, and obtained an order of justices for repayment by the defendants of the expenses incurred. It was held that the defendants were the "owners" of the premises; that they were not within the exemption given by this section; and that the order of the justices was, therefore, rightly made (*Hornsey L. B.* v. *Brewis* (1890), 60 L. J. M. C. 48; 55 J. P. 389). Section 16 of the Private Street Works Act, 1892, *post*, specially provides for similar cases where that Act is in force.

Certain premises were formerly used as a church. A new church having been built on another site, Sunday services were held only in the new building. The old premises were used on Sunday for a Sunday school, and on week-day evenings for services and class meetings. A debating society met upon the premises once a week free of charge. Once a month a Rechabites society met in the vestry and paid £1 per annum for fuel and lighting. On one occasion a political meeting had been held on the premises, the organisers paying 2*s.* 6*d.* for light and heat. There had also been held on the premises an "At Home" in connection with church work, for which there was a charge for admission; and a dramatic entertainment for which there was a charge for admission. On each occasion the premises were open to the public, and the moneys paid for admission were received by the owners and used by them for current expenses, and to liquidate the debt on the new church. The premises had not in fact been rated for the relief of the poor. It was held that the premises were not exclusively appropriated to public religious worship; that they were not by law exempt from poor rate, and, therefore, were not exempt from private street works expenses under s. 16 of the Private Street Works Act, 1892 (*Walton-le-Dale U. D. C.* v. *Greenwood* (1911), 75 J. P. 541; 105 L. T. 547). Under the corresponding Scotch enactment it has been held that church and mission halls sometimes used

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for temperance meetings and for congregational social meetings are not "exclusively" appropriated to public religious worship, and do not fall within the exemption (*Trustees of College Street United Free Church* v. *Parish Council of Edinburgh* (1901), 3 F. 414). For a decision under a differently worded Irish Act, see *R.* v. *Belfast* (*Recorder*), [1913] 2 I. R. 431.

Under a local Act which required the churchwardens or chapelwardens for the time being of any parochial church or chapel to pay the paving rates assessed upon such church or chapel, it was held that a district church erected under 6 & 7 Vict. c. 37, was not exempt from being rated, and that the churchwardens were liable to pay the rates although they had no parochial funds for that purpose (*Mills* v. *Ryder* (1854), 10 Ex. 67; 18 J. P. 633).

Churches and chapels in metropolis.

There is no such exemption as this in the metropolis. The trustees of a dissenting chapel were held liable under 18 & 19 Vict. c. 120, s. 105 (*Caiger* v. *St. Mary, Islington* (1881), 50 L. J. M. C. 59; 45 J. P. 570; *Wright* v. *Ingle* (1885), 16 Q. B. D. 379). But it was otherwise held with respect to a church which was consecrated and so dedicated to permanent and unalterable uses (*Angell* v. *Paddington* (*Vestry of*) (1868), L. R. 3 Q. B. 714; 32 J. P. 742). In the case of a cemetery, part of which was consecrated, belonging to a company, such company were held liable (*St. Giles, Camberwell* (*Vestry of*) v. *London Cemetery Co.*, [1894] 1 Q. B. 699; 58 J. P. 382).

By the Church Building Act, 1845, s. 13, the "freehold of the site of every church" of which the commissioners therein mentioned shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated. It was held that upon such consecration the whole of the land so conveyed to the commissioners vested in the incumbent; that the commissioners ceased to be the "owners" of it, and were, therefore, not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street (*Plumstead District Board of Works* v. *Ecclesiastical Commissioners*, [1891] 2 Q. B. 361; 55 J. P. 791).

Schools.

It was decided in *Bowditch* v. *Wakefield L. B.* (1871), L. R. 6 Q. B. 567; 36 J. P. 197, that a "national" school was not exempt, and that one of the trustees was liable to pay the proportion of the expenses in respect of such school. This decision was followed in *Hornsey U. D. C.* v. *Smith*, [1897] 1 Ch. 843; 76 L. T. 431; if, however, the school site was conveyed under the School Sites Act, 1841, difficulty may be experienced in seeking to make effective a charge upon the school (*ibid.*). A local education authority are also liable in respect of their schools (*London School Board* v. *St. Mary, Islington* (*Vestry of*) (1875), 1 Q. B. D. 65; 40 J. P. 310). 32 & 33 Vict. c. 40, provides that every authority having power to impose or levy *any rate* upon the occupier of any building used exclusively as a Sunday school or ragged school *may* exempt such building or part of a building from any *rate* for any purpose whatever which such authority has power to impose or levy. The exercise of this power is discretionary: see *Bell* v. *Crane* (1873), L. R. 8 Q. B. 481; 37 J. P. 711; and *quære* whether the proportion of expenses under s. 150 is a *rate* within the meaning of this Act.

By the Voluntary Schools Act, 1897, s. 3, no person shall be assessed or rated to or for any *local rate* in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof. By s. 4, "local rate" in that Act, unless the context otherwise requires, means "a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a local rate as before defined." The apportioned expenses of making up a street clearly do not fall within the definition, and therefore the decisions in *Bowditch* v. *Wakefield L. B.*, and *Hornsey U. D. C.* v. *Smith*, *supra*, are still law.

(*b*) The previous section requires the authority to give notice to the owner or occupier of the premises to make the street, and in their default empowers them

to do the work themselves. This proviso, therefore, deals with the case where, the minister being exempt, there may be no *owner* liable to do the work, and consequently no default. Under the Private Street Works Act, 1892, s. 16, the authority, where that Act is in force, are bound to pay the proportion of expenses in respect of which an exemption under that section is allowed. **Note to Section 151.**

152. (*a*) When any street within any urban district not being a highway repairable by the inhabitants at large (*b*) has been sewered levelled paved flagged metalled channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority (*c*), such authority may (*cc*), if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large (*d*); and every such notice shall be entered among the proceedings of the urban authority. Power to declare private streets when sewered, etc., to be highways.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors (*e*) of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor (*e*).

(*a*) As to the application of this section to rural districts, see the early part of the note to s. 150.

Where the P. H. A., 1890, s. 41, *post*, is in force by adoption, the above section is repealed, and the provisions of s. 41 are substituted in lieu thereof.

See also the P. H. A., 1907, s. 19, *post*.

(*b*) As to the meaning of these words, see *ante*, p. 274.

(*c*) Note the use of the copulative. This section is not a complement to s. 150. In order that an authority may declare a street not repairable by the inhabitants at large to be a highway, so that it may become so repairable, it is necessary that each of the works specified in s. 152 shall, at the time of declaration, have been executed upon the street to the satisfaction of the authority. An authority has not, under this section, any discretion as to which of the works mentioned in it they will require to be executed: their discretion is limited to being satisfied with the efficiency of each description of work when done. In *Att.-Gen.* v. *Bidder* (1881), 47 J. P. 263, it was suggested, if not decided, that kerbing a road did not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and that wooden paving did not come within the meaning of any of the requirements of the section. But now, by the P. H. A., 1890, s. 11 (2), *post*, a street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind, shall be deemed to have been paved within the meaning of the Public Health Acts: Provided that a street shall not be deemed to be paved to the satisfaction of the urban authority, unless it is paved with such kind of paving as the local authority shall consider suitable for the street. Compare the Private Street Works Act, 1892, s. 5, *post*. And see *Allen* v. *Fulham Vestry* (1898), 62 J. P. 548; 79 L. T. 190. Where s. 19 of the Act of 1892 is in force, it is not necessary that all the works in the Act mentioned should have been executed before the street is adopted: nor is it necessary where Part III. of the P. H. A., 1890, has been adopted, if the partial works have been executed *by the authority*. All the specified works must be done.

In *Saunders* v. *Brading Harbour Improvement Railway and Works Co.* (1885), 52 L. T. 426, the defendants agreed to construct a road over land of the plaintiff, who was to grant the defendants a right of way over the road when completed, and to permit it to be declared a public highway by the local board. The defendants were to make the road according to a plan and specification already approved by the local board, and to do all things necessary to carry out a resolution passed by the board that the road should six months after completion to their satisfaction be declared

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by the board a public highway. The specification provided that the pathways should be gravelled, and did not provide for means of lighting. After completion of the road the board were advised that the road did not comply with the requirements of this section, inasmuch as it was not flagged nor provided with means of lighting, and they withheld their sanction to its being declared a public highway. The plaintiff brought an action claiming specific performance by the defendants of the agreement on the ground that they had not done all things necessary to enable the board to declare the road a public highway:—*Held*, that inasmuch as to compel the defendants to construct the road so as to conform with the provisions of the Act would be to enforce performance of terms at variance with the agreement and entirely outside the contemplation of the parties, specific performance could not be ordered. Whether the plaintiff would have been entitled to damages if any had been shown, *quære*.

(*cc*) Under the Private Street Works Act, 1892, s. 20, *post*, (if in force) an authority may be compelled to "take over" a street. See also the P. H. A., 1907, s. 19, *post*.

Dedication under Highway Act, 1835, s. 23.

(*d*) This is a substitute for the provision in the Highway Act, 1835, s. 23, relating to the dedication of roads to the public. A landowner in a district under the P. H. A., 1848, gave notice to the local board of his intention to dedicate a certain road as a highway, to which the board replied that they would not adopt the road, as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The landowner, however, obtained and enrolled a certificate of two justices under the Highway Act, 1835, s. 23, and the public then used the road, which was kept in repair by the landowner for twelve months; after which, it being out of repair, an indictment was preferred against the parish. It was held that the inhabitants were not liable, for assuming s. 23 to apply to the case, the road had not been made to the satisfaction of the local board who were the surveyors. WIGHTMAN, J., expressed an opinion that s. 23 was not inconsistent with the P. H. A., 1848, for the board had a discretion as to the amount and kind of repairs to be done to the road, and they might require it to be paved, etc., having regard to the sections of the Act of 1848 corresponding with ss. 150, 152 (*R.* v. *Dukinfield* (1863), 27 J. P. 805; 4 B. & S. 158).

No right or liability to repair on the part of a highway authority exists in the case of a road dedicated to the public since August 30th, 1835, unless it has been dedicated or "taken over" in accordance with the Highway Act, 1835, s. 23, this section, one of the other enactments mentioned on p. 276, or some statutory inclosure award or local Act (*Eyre* v. *New Forest Highway Board* (1892), 56 J. P. 517). See *Leigh-on-Sea U. D. C.* v. *King*, and *Cababé* v. *Walton-on-Thames U. D. C.*, p. 293, *ante*, as to presuming compliance with statutory formalities; and see generally upon the subject of public liability to repair, pp. 274, *et seq.*, *ante*. As to the repair of diverted or substituted roads, see p. 293, *ante*.

The fact that a private road has been made up at the cost of the frontagers does not if it is not declared a highway, give a frontager any right of access to it which he did not already possess (*Moubray, Rowan and Hicks* v. *Drew*, [1893] A. C. 295).

"Proprietors'" power of veto.

(*e*) There is no definition of the word *proprietor*, which is not a legal term having any distinct meaning. See *Lister* v. *Lobley* (1837), 7 A. & E. 124, where it was held, in a clause giving compensation to *owners or proprietors*, that these words applied not only to the owners in fee simple, but to lessees for terms of years also. In *Rossiter* v. *Miller* (1877), 5 Ch. D. 648, JESSEL, M.R., said: "Is there any doubt that, according to ordinary language, the word *proprietors* means *owners*, and the word *owners*, proprietors?" Having regard to this and the preceding sections, the word as used in the text is probably equivalent to *owners*; and probably it means the owners of the soil of the street and not the frontagers in a case where the latter do not also own the actual street. See *Steward* v. *Metropolitan Electric Tramways, Ltd.*, in notes to the P. H. A., 1890, s. 41 (2), *post*.

Where any part of a street belongs to two or more persons as joint tenants, they can give one vote between them; each person who owns a part in severalty can give one vote.

It is presumed that an objection may be withdrawn, and a declaration then made.

Section 153.

Power to require gas and water pipes to be moved.

153. Where for any purpose of this Act any urban authority deem it necessary (*a*) to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks (*b*) or gasworks laid in or under any street (*b*), they may by notice in writing (*c*) require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice ; the expenses of or connected with any such alteration shall be paid by the urban authority ; and if such notice is not complied with the urban authority may themselves make the alteration required (*d*) :

Provided—

That no such alteration shall be required or made which will permanently (*e*) injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual ; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

(*a*) The power conferred by this section apparently imposes no liability upon an authority, if they cause the level of a street to be lowered under s. 149, *ante*, p. 273, to lower to a corresponding extent the pipes in the street (*Southwark and Vauxhall Water Co.* v. *Wandsworth District Board*, [1898] 2 Ch. 603 ; 62 J. P. 756).

(*b*) For definitions of *waterworks* and *street*, see s. 4, *ante*, p. 34, and p. 15.

(*c*) See, as to the authentication and service of the notices, ss. 266, 267, *post*.

(*d*) At their own expense.

(*e*) In the case of slight or temporary injury compensation may be claimable under s. 308, *post*.

Power to purchase premises for improvement of streets.

154. Any urban authority (*a*) may purchase any premises (*b*) for the purpose of widening opening enlarging or otherwise improving any street (*c*), or (with the sanction of the Local Government Board (*d*)) for the purpose of making any new street (*e*).

A somewhat similar power as regards the widening of streets is conferred upon urban authorities by s. 160 (2). In some cases roads may also be widened under he Highway Act, 1835, s. 82.

Rural authorities.

(*a*) Such rural district councils as succeeded to the powers of highway boards have powers for the widening of roads and the construction of new roads under the Highway Act of 1862. R. D. C.'s who succeeded Surveyors of Highways have only the limited powers given to surveyors by the Highway Act, 1835, and may find it desirable to apply to the M. of H. for the powers of s. 154. These powers are readily given except as to new roads. See also the P. H. Act, 1907, s. 95, *post*.

If the rural council are proceeding under the Highways and Bridges Act, 1891, by agreement with another highway authority, the powers of that Act are sufficient, and no Order under s. 276, *post*, is necessary.

Under the L. G. A., 1894, s. 8, parish councils have certain powers for the acquisition of rights-of-way. It is very doubtful whether such powers are sufficient to enable a parish council to undertake the contruction of a new road.

Note to Section 154.

Purchase of land.

(*b*) The word "purchase" includes "gift." If, therefore, land is given for the purposes of a new street, the sanction of the M. of H. should, in their opinion, be obtained. A distinct power to accept gifts may, however, be obtained under the L. G. A., 1894, see ss. 8 (1) (*h*) and 33. Under the Crown Lands Act, 1906, the Commissioners of Works may convey to a local authority land required for the purpose of widening, or improving, any bridge, including the approaches thereto and abutments thereof.

See the definition of "premises" is s. 4, *ante*, p. 7.

See *St. Nicholas, Leicester* v. *Langton*, [1899] P. 19; *Re St. Anne's, Soho* (1900), Times, July 20th; *Re Rector, Churchwardens and Corporation of Bideford*, [1900] P. 314; 64 J. P. 743; *Sutton* v. *Bowden*, [1913] 1 Ch. 518; *Re St. Mary Abbot* (1914), Times, May 4th; *Ex parte Uxbridge U. D. C.* (1914), 30 T. L. R. 448; and *Re St. Anne's, Limehouse* (1915), 31 T. L. R. 539, as to the grant of a faculty for widening a street by taking in a strip of a churchyard.

In a case arising under the Metropolis Management Acts it was held that a borough council has power to enter into an agreement with a landowner, as part of a scheme for widening a road, to remove a sign-post belonging to him to a position on the edge of the public footpath (*Hoare & Co., Ltd.* v. *Lewisham Borough Council* (1903), 67 J. P. 20; 87 L. T. 464).

As to the power to purchase the requisite land, see ss. 175 *et seq.*, *post*, p. 412. Under the corresponding provision in the P. H. A., 1848, s. 73, land could only be purchased by agreement, and the urban authority had no compulsory powers. See *Frewen* v. *Hastings L. B.* (1867), 16 L. T. 553. Land may be acquired compulsorily for purposes of this section under s. 176, *post*, p. 417. Whether land is purchased by agreement or compulsorily it would appear that the vendor is entitled to insist on the council taking a duly executed conveyance of the land (*Great Hospital Trustees* v. *Norwich Corporation*, Local Government Chronicle, 1885, p. 860; *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 70 J. P. 345). And, although a purchasing council are entitled generally to say by what description land purchased shall be vested in them, the vendor may require the description to be such as to give effect to the true contract (*Monighetti* v. *Wandsworth Borough Council* (1909), 73 J. P. 91).

The authority must in every case acquire the freehold of the premises or obtain the freeholder's consent to the land being thrown into the street. The M. of H. would not otherwise sanction any loan for the scheme.

In a borough any surplus of the borough fund may be applied towards enlarging the streets under the Municipal Corporations Act, 1882, s. 143.

Though the authority can, under this section, add land to a highway, they cannot take away any land from the highway, even if such land has, by reason of a part added, become unnecessary. A highway cannot, generally speaking, be stopped up or diverted except pursuant to the Highway Act, 1835, ss. 84—91 (*R.* v. *Platts* (1880), 49 L. J. Q. B. 848; 44 J. P. 765). Under special circumstances, however, highways may be interfered with under the Church Building Act, 1819; the Defence Act, 1860; Inclosure Acts; the Military Lands Act, 1892; the Military Manœuvres Acts, 1897 and 1911, and Railway Acts.

A town council, in connection with a street widening, proposed to exchange land forming part of the existing highway for other land required for the improvement. The L. G. B. pointed out that before the scheme could be carried out an order of justices was necessary under the Highway Act, 1835, ss. 85 *et seq.* They referred to *Coverdale* v. *Charlton* (1879), 4 Q. B. D. 104; 43 J. P. 268, and *Rolls* v. *St. George, Southwark* (1880), 14 Ch. D. 785; 44 J. P. 680, and observed that it was not clear to them that, even if an order for diversion was made, the council would possess such rights over the soil of the disused part of the highway as would enable them to exchange it for other land. It seemed to the Board that on the present roadway being legally stopped up the adjoining owner would without further action be the owner of the soil discharged of the right of the public to pass over it.

Liability for future maintenance of new or widened street.

Where an authority acting under this section make a new street it must be kept in repair by them, and they cannot subsequently make it up at the cost of the frontagers (*Kingston-upon-Hull Corporation* v. *Jones* (1856), 21 J. P. 37; 1 H. & N. 489). So, too, if by purchase, or by an agreement equivalent to purchase, they widen an old street repairable by them, they must keep in repair the added strip.

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In 1883, the owners of an estate, through which ran an ancient highway about thirty feet wide, repairable by the inhabitants at large, agreed with the local authority that as and when the estate should be laid out for building the owners would straighten and lay out the road so as to make it forty feet wide. The agreement recited that it was entered into for the purpose of settling a question which had arisen as to the width of the road. When the whole of the road had been laid out in accordance with the agreement, the authority made it up and sought to charge the frontagers, under s. 150, with the cost of so doing. It was held that the agreement amounted to a purchase by the authority under s. 154 of the land thrown in to widen the road, and the frontagers were not liable (*Portsmouth Corporation* v. *Hall* (1909), 98 L. T. 513; 71 J. P. 564). A contract by which an owner agrees to throw land into a street and the authority agree to adopt and make up the added strip should be under seal; otherwise the owner cannot obtain specific performance (*Hoare* v. *Kingsbury U. D. C.*, [1912] 2 Ch. 452; 76 J. P. 401).

As regards the liability to make up strips of land thrown into a street, reference might also be made to the cases referred to *ante*, at pp. 315–316.

Metropolitan decisions.

Reference may be made to the corresponding powers of borough councils in the metropolis or of the common council of the city of London, as to which see *Teuliere* v. *St. Mary Abbotts, Kensington* (*Vestry of*) (1885), 30 Ch. D. 642; 50 J. P. 53; *Gard* v. *Commissioners of Sewers* (1885), 28 Ch. D. 486; *Lynch* v. *Commissioners of Sewers* (1886), 32 Ch. D. 72; 50 J. P. 548; *Gordon* v. *St. Mary Abbotts, Kensington* (*Vestry of*), [1894] 2 Q. B. 742; 58 J. P. 463; *Aldis* v. *London* (*Corporation of*), [1899] 2 Ch. 169; 63 J. P. 376; *Fernley* v. *Limehouse District Board* (1900), 64 J. P. 328; 82 L. T. 524; *Gibbon* v. *Paddington Vestry* (1900), 69 L. J. Ch. 746; *Parry* v. *Hammersmith Borough Council* (1904), 69 J. P. 35; 92 L. T. 161; *Pescod* v. *Westminster Corporation*, [1905] 2 Ch. 475; 69 J. P. 387; *Thompson* v. *Hammersmith Borough Council*, [1906] 1 Ch. 299; 70 J. P. 100; *Denman & Co., Ltd.* v. *Westminster Corporation* and *Cording & Co., Ltd.* v. *Westminster Corporation*, [1906] 1 Ch. 464; 70 J. P. 185; *Wild* v. *Woolwich Borough Council*, [1910] 1 Ch. 35; 74 J. P. 33; *Green* v. *Hackney Corporation*, [1910] 2 Ch. 105; 74 J. P. 278; *Davies* v. *London Corporation*, [1913] 1 Ch. 415; 77 J. P. 294; *Beyfus* v. *City of Westminster* (1915), 79 J. P. 111; 13 L. G. R. 40; *South Eastern Ry. Co.* v. *L. C. C.*, [1915] 2 Ch. 252; 79 J. P. 545.

For a case where it was alleged that the claim to purchase land for the purpose stated was not bonâ fide, see *Marquess of Clanricarde* v. *Congested Districts Board for Ireland* (1915), 79 J. P. 481; 49 Ir. L. T. 42.

(*c*) See the definition in s. 4, *ante*, p. 15. See also note (*b*) to s. 150, *ante*, p. 288. It will be seen that a council are not precluded from incurring expense in acquiring lands for the widening of a street by the fact that the street is not repairable by the inhabitants at large. But, presumably, the public must possess, or be about to obtain, an indefeasible right of way over it. As to the widening and improvement of main roads, see the L. G. A., 1888, s. 11, and notes thereto.

(*d*) The sanction required is now that of the Ministry of Health. Application should be by resolution of the council of which a copy should be forwarded with plans of the proposed improvement. Such applications are usually combined with proposals to borrow money.

(*e*) It may be noted that in questions of highway improvement and the formation of new roads the Ministry of Health now act in consultation with the Ministry of Transport. See the Ministry of Transport Act, 1919 (*post*), and notes thereto.

It is essential that the proposed new street should comply with the byelaws in force in the district as to new streets (see s. 157). In exceptional cases the L. G. B. confirmed a special exempting byelaw in order to regularise a scheme for a new thoroughfare of less than the prescribed width.

Power to regulate line of buildings.

155. When any house (*a*) or building situated in any street (*b*) in an urban district, or the front thereof, has been taken down (*c*), in order to be rebuilt or altered, the urban authority may prescribe the line (*d*) in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house

Section 155. or building, or the front thereof, shall be erected in accordance therewith (*e*).

The urban authority shall pay or tender compensation to the owner (*f*) or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act (*g*).

See the proviso as to railway buildings in s. 157, *post*, p. 327.

(*a*) See the definition of *house* in s. 4, *ante*, p. 20.

(*b*) For the definition of a *street*, see s. 4, *ante*, p. 15. See also note (*c*) under s. 3 of the Public Health (Building in Streets) Act, 1888, *post*. The word "street" is apparently used here in its ordinary sense of a road with buildings on each side.

Buildings destroyed by fire, etc.

(*c*) This means "substantially taken down." See *Att.-Gen.* v. *Hatch*, *post*, p. 325. The words "taken down" do not seem applicable to the case of buildings destroyed by fire or other casualty (*cf.* s. 23 of the London Building Act, 1894). If so, then apparently s. 3 of the Public Health (Buildings in Streets) Act, 1888, would be applicable, and it may be that no compensation would be payable for setting back.

As to the liability of owners under a local Act, relating to the "taking down to be rebuilt or repaired of part of a front wall," for an alteration not intended by them, and made by builders without their knowledge or instructions, see *Yabbicom* v. *Bristol Brewery, Ltd.* (1903), 67 J. P. 261; 1 L. G. R. 477.

Prescription of a building line.

(*d*) The "line" of a street need not be a strict mathematical line; it means substantially such a line as shall preserve uniformity of appearance (*per* WILLES, J., in *Tear* (or *Fear*, or *Sear*) v. *Freebody* (1858), 4 C. B. (N.S.), at p. 262).

The corporation of F. had power under a local Act to prescribe the line in which any house to be thereafter built or taken down for the purpose of being rebuilt or altered should be erected, on payment of compensation to the owner of any house required to be set back; it was also provided that no new street to be thereafter laid out should be of less width than 40 feet, inclusive of footways, and in the case of existing streets, houses to be thereafter erected were to be set back so as to allow of a width of 40 feet. A temporary church, fronting a road less than 40 feet wide, having been pulled down with a view to erecting a permanent church, the corporation gave notice to the clergyman in charge of a resolution passed by them that the road must be not less than 40 feet wide; but there was no statement that the additional width was to be gained on the side on which the church abutted, and it appeared that the street might have been widened on the side opposite without removing any buildings. Afterwards, but not until the foundations of the new church had been put in, the corporation prescribed a building line which intersected the church as designed:—*Held*, that they were too late, and could not restrain the erection of the church in the manner in which it had been commenced (*Folkestone Corporation* v. *Woodward* (1872), L. R. 15 Eq. 159; 37 J. P. 324).

Where a building has been taken down to be rebuilt, a building line may be prescribed under this section for any portion of it which has not been commenced, although other portions of it have been commenced, unless the portion commenced necessarily involves as a matter of construction a projection beyond the line afterwards prescribed. The defendants, being about to pull down a school and erect a new one, submitted plans to the local board. The local board objected to the plans, giving as a reason that they violated a byelaw requiring a person laying out a street to lay it out of a certain width. This byelaw was not applicable, as South Lane, on which the school fronted, was not a new street. The defendants disregarded the objection, commenced their works on January 5th, laid the foundations of the main wall towards South Lane on the 12th, and proceeded rapidly with the erection of it. On January 22nd the local board prescribed a building line which did not interfere with the main wall, but would prevent the erection of certain annexes not then commenced, lying between South Lane and the main wall, which

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annexes were shown on the plans laid before the board. The defendants had ground enough to allow of the annexes being erected elsewhere. The defendants proceeded with the annexes, and the board brought an action to restrain them from building beyond the line, and to compel them to pull down what they had built beyond it. It was held that the commencement of the main building did not preclude the board from laying down a line which would prevent the erection of the annexes which had not then been commenced. It was held also that as the notice given by the board, though ineffectual for the purpose of empowering them to pull down the erection under s. 158, *post* p. 353, gave the defendants to understand that the board objected on the ground that buildings according to the plan would make the street too narrow, the board had not done anything to induce the defendants to believe that they would not prescribe a building line, and that there was no equity to prevent the board from exercising their power under this section on the ground that they had misled the defendants (*Newhaven L. B.* v. *Newhaven School Board* (1885), 30 Ch. D. 350). The principle of this case was approved in *Att.-Gen.* v. *Hatch*, [1893] 3 Ch. 36; 57 J. P. 825, where, however, the main question was as to the meaning of the words "taken down," which the court of Appeal decided meant "substantially taken down." In that case the owner of a house took out the front wall of the ground and first floors and removed the first floor in order to convert the two lower storeys into one lofty shop, which was also to be extended behind the house. The second floor was not disturbed, but was shored up with timber, afterwards replaced by iron girders and brick piers. Shortly after the erection of the girders and piers had been completed the authority prescribed a building line, and commenced an action to restrain the owner from building in front of it. It was held by KEKEWICH, J., that the house had been substantially taken down, but that the authority had not prescribed the line in time. The Court of Appeal held that the house had not been substantially taken down, and that the power to fix a building line had, therefore, never arisen.

Scotch "building line" cases.

Several decisions have been given by the Court of Session in Scotland upon the provision in the corresponding Scotch Act (25 & 26 Vict. c. 101, s. 162), which is, however, limited to a house or building, "any part of which projects beyond the regular line of the street or beyond the front of the house or building on either side thereof," It was held that this section did not apply where the owner of a house which stood *back* from the line of the adjoining house proposed to bring it forward, and also that the wall and railing of his front garden (which did project beyond the line of the adjoining house) was not a "building" (*Fraser* v. *Kennedy* (1877), 4 Ct. of Sess. Cas. (4th ser.) p. 266; affirmed in H. L., 15 Sc. L. R. 765). Pending the appeal the owner brought an action for damages against the commissioners in respect of their having wrongfully prevented him from proceeding with his building operations, and it was held that such an action would lie, although there was no averment of malice and want of probable cause (*Kennedy* v. *Fort William* (*Police Commissioners of*) (1877), 5 Ct. of Sess. Cas. (4th ser.), p. 302). For decisions as to the meaning of the words "regular line of the street" in the Scotch Act, see *Schulze* v. *Galashiels Corporation*, [1895] A. C. 665; *Robertson* v. *Greenock Police Board* (1883). 11 Ct. of Sess. Cas. (4th ser.), p. 304. In the latter case, one division of a long street consisted on one side of public buildings (with a frontage four feet back from the general line of the street) and of two adjoining houses, Nos 2 and 4, occupied as one tenement, belonging to one proprietor (with a frontage in line with the general line of the street). In 1878 the proprietor applied for a warrant to rebuild the two houses on the same site, whereupon the commissioners served a requisition requiring the new buildings to be rebuilt four feet back, in line with the adjoining public buildings. The owner did nothing, but in 1881 he applied for a warrant to take down and rebuild No. 2, which did not adjoin the public buildings. A second requisition was then made requiring him, as owner of the house, or building numbered 2 and 4, "and which house or building, or a part thereof, is about to be altered or rebuilt, and which house or building projects four feet beyond the line" of the adjoining buildings, and beyond the line of the street from A. to B. (describing the division of the street), to set back the front of the buildings to be erected, to the line of the adjoining public buildings and of the street. In an action by the owner for a declaration that he was entitled to build up to the line of his former frontage, the court held that Nos. 2 and 4 were to be regarded

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as one building; that the line of the adjoining building was to be taken as the line of the street; and that, therefore, the requisition must receive effect (LORD CRAIGHILL, *diss.*, held that Nos. 2 and 4 were to be regarded as separate buildings, and that the pursuer was entitled to rebuild No. 2 on its former site, as it did not project beyond No. 4, or beyond the general line of street, of which the adjoining public buildings formed a mere fraction).

Enforcement of prescribed line.

(*e*) An erection in violation of this section may be prevented by injunction, or, if complete, will subject the builder to an indictment. But where the owner of a factory, being desirous of rebuilding it, submitted his plans to the local board, and, on the plans being approved, proceeded to pull down the factory and re-erect it according to the plans, it was held that the board could not, under the corresponding provisions of the L. C. A. 1858, s. 35, require him to set back his premises, and they were restrained from interfering (*Slee* v. *Bradford* (*Corporation of*) (1863), 27 J. P. 612; 8 L. T. 491). In a similar case the owner of a house having, in accordance with a byelaw, left, on October 16th, a plan of an intended new building, the local board passed a resolution that the plan was approved of, and that he should be offered £40 for certain land of his thrown into the street. He refused to accept the £40, but proceeded with his works, and by October 26th had pulled down the front wall of his house. On the 27th, the board passed a resolution abandoning the terms before offered, and requiring him to set his frontage further back, notice being given under the above section. On November 27th the owner proceeded with his building, and on December 21st he was required to pull down his new building. It was held that, the board having approved a plan and having allowed the owner to pull down the front wall of his house, they could not afterwards avail themselves of the powers given by this section (*Masters* v. *Pontypool L. B.* (1878), 9 Ch. D. 677).

In *Att.-Gen.* v. *Parish*, [1913] 2 Ch. 444; 77 J. P. 391, the defendant, the owner of a house in P. Lane, on January 19th, deposited plans for the proposed rebuilding of the house, and its demolition was begun on January 26th. On February 5th at a meeting of the authority a plan was submitted by the surveyor showing a "street line" and "building line" for P. Lane, and a resolution was passed adopting such lines; it was further resolved that the defendant's plans be disapproved as not complying with the building line and certain byelaws. On February 15th the clerk wrote informing the defendant of the latter resolution. On February 24th the defendant's architect informed the clerk that he could not agree to the building line, and on February 26th the foundations of the new house were laid. On the same day the clerk wrote drawing the defendant's attention to the responsibility attaching to building contrary to a prescribed line. On March 12th the surveyor wrote giving the defendant formal notice not to proceed with the building, as the erection did not comply with the prescribed building line. The building was completed on April 27th in conformity with the byelaws, but about four feet in advance of the prescribed building line. At no time did the authority tender or offer to pay compensation to the defendant or give him notice that they had prescribed the building line under s. 155, or were purporting to exercise their powers under that section. In an action by the Attorney-General for a mandatory injunction to remove so much of the building as was in advance of the prescribed building line, it was held that the relators had duly prescribed a building line within s. 155; that there was no necessity for them to give the defendant notice that they were proceeding under that section; that the tender or payment of compensation was not a condition precedent to their taking any steps under the Act; and, the defendant having unsuccessfully challenged their right to do what they had done, that a mandatory injunction to pull down the building ought to be granted. See also *Folkestone Corporation* v. *Woodward* and *Newhaven L. B.* v. *Newhaven School Board*, in the preceding note.

In *Sutton L. B.* v. *Hoare* (1894), 10 T. L. R. 586, an action brought to restrain the defendant from rebuilding his premises so as to project beyond the line prescribed by the plaintiffs, the defendant alleged that the plaintiffs in prescribing the line had not acted bonâ fide in the exercise of their powers, because on each side of his premises there were comparatively new houses, and the plaintiffs had not laid down any general line in that part of the street to be enforced under the compulsory powers given by s. 154 for street widening. NORTH, J., granted

an injunction, as there was no obligation upon the plaintiffs to proceed under s. 154. **Note to Section 155.**

(*f*) See the definition in s. 4, *ante*, p. 8.

(*g*) See s. 179, *post*, p. 425. As to the time for tendering compensation, see *Att.-Gen.* v. *Parish*, *supra*. For a case as to the method of calculating the compensation payable for a portion only of a front plot abutting upon a street about to be widened, but where the back land immediately adjoining is the property of the same vendors, see *S. E. Rail. Co.*, v. *L. C. C.*, [1915] 2 Ch. 252; 79 J. P. 545.

Buildings not to be brought forward.

156. *It shall not be lawful in any urban district, without the written consent of the urban authority to bring forward any house or building forming part of any street or any part thereof beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same.*

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

This section was repealed by the Public Health (Buildings in Streets) Act, 1888, which re-enacts it in an amended form. See the Act and notes thereto, *post*. A question arose as to whether rural authorities who were invested with the powers of s. 156 before its repeal, acquired the powers of the Act of 1888 without any further order. The L. G. B. considered the point to be a doubtful one and advised an application for a new order.

Power to make byelaws respecting new buildings, etc.

157. Every urban authority may make byelaws (*a*) with respect to the following matters; (that is to say),

(1) With respect to the level width and construction of new streets (*b*), and the provisions for the sewerage (*c*) thereof:

(2) With respect to the structure of walls foundations roofs and chimneys (*d*) of new buildings (*e*) for securing stability and the prevention of fires, and for purposes of health (*f*):

(3) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings (*g*):

(4) With respect to the drainage of buildings, to water-closets earth-closets privies ashpits (*h*) and cesspools in connection with buildings (*i*), and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation (*j*):

And they may further provide for the observance of such byelaws by enacting therein such provisions as they think necessary as to the giving of notices (*k*), as to the deposit of plans (*l*) and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) (*m*) to remove, alter, or pull down any work begun or done in contravention of such byelaws (*n*): Provided that no byelaw made under this section (*o*) shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary

Section 157. district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board (*p*) subject to this enactment.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament (*q*).

Further provisions of the P. H. A., 1890.

This section has been extended and amended by the P. H. A., 1890, s. 23, in places where Part III. of that Act has been adopted, see *post*.

Further provisions of the P. H. A., 1907.

There are also certain provisions of the P. H. A., 1907, *post*, which must be noticed in connection with the subject; but, of course, none of them will be in force in any district until applied thereto by Order of the Central Department, and an Order so applying them may impose conditions or make modifications. The sections in question are: s. 15, Deposit of plan to be of no effect after certain intervals; s. 16, As to plans deposited with local authority; s. 17, Power to vary position or direction and to fix beginning and end of new streets; s. 22. Buildings at corner of streets; s. 23, What to be deemed "new buildings"; s. 24, Byelaws as to height of chimneys, etc.; s. 25, Yards to be paved; s. 26, Entrances to courts, etc., not to be closed; s. 27, As to temporary buildings; and s. 33, Exemption of buildings of railway companies and others.

Position of rural authorities.

It will be seen that rural councils are not directly authorised to make byelaws for the regulation of buildings, but can obtain power to do so in the following ways:

(i) By adopting Part III. of the Act of 1890, thus acquiring power to make byelaws upon the subject-matters referred to in s. 23 (3), *supra*; or

(ii) By applying to the M. of H. to be invested with such of the powers conferred by the two Acts as they deem suitable to their district, or to some contributory place within it. Such an application can be made whether the council have adopted Part III. of the Act of 1890 or not, but in the former case it is merely a question of what additional powers are required. The application should be by resolution of the council authorising an application under s. 276 of the Act of 1875 or s. 5 of the Act of 1890, as the case may be, for an order putting the desired powers in force. The resolution should specify the provisions which are considered to be necessary, and the names of the contributory places in respect of which the powers are sought, and a copy of it should be sent to the Ministry with a brief statement of the grounds upon which the application is made. If such an application is made with reference to s. 157 of the Act of 1875 it should extend to s. 158 also (unless s. 23 (3) of the Act of 1890 is already in force) and the council should consider the desirability of including the powers of ss. 25 and 33 of the Act of 1890 in the application.

In connection with either of these steps, application may be made for an Order putting in force some provisions of the Act of 1907.

Model byelaws.

The Ministry issue several series of model byelaws for the guidance of local authorities in making byelaws under s. 157. These are (a) an urban code appropriate to the larger boroughs and urban districts; (b) a rural code containing the minimum requirements for sanitary purposes which are regarded as necessary in essentially rural areas, *i.e.*, byelaws within the scope authorised by s. 23 (3) of the Act of 1890; and (c) an intermediate model which contains less detailed requirements as to the structure of walls and foundations of new buildings than are inserted in the urban model but is in other respects of the same scope. The last-mentioned series is intended for urban districts which have generally rural characteristics and for those parishes in rural districts where there is expected to be considerable building activity.

The Ministry have not issued any model forms of additional byelaws such as may be made under s. 23 of the Act of 1890 with respect to floors, roofs, etc., but model byelaws on the subject will be found in the work of Messrs. Mackenzie and Handford.

Periodical revision of byelaws

In a circular of August 29th, 1912, the L. G. B. pointed out the necessity for periodically revising byelaws so as to keep them up to date in view of modern methods of construction, and so as to prevent their restricting building operations by any

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excessive stringency. In this connection it should be noted that under s. 44 of the Housing, Town Planning, etc. Act, 1909, *post*, the Central Department can insist upon the revocation of unreasonable byelaws.

Power of M. of H. to revoke unreasonable byelaws.

The model byelaws are so drawn as not to apply to certain classes of buildings (see p. 330, *post*); the last paragraph of s. 157 exempts certain railway buildings (see also as to railway, canal, pier and dock companies, s. 33 of the P. H. A., 1907); and by the Education (Administrative Provisions) Act, 1911, s. 3, "The provisions of any byelaws made by any local authority under section one hundred and fifty-seven of the Public Health Act, 1875, as amended by any other Act, with respect to new buildings (including provisions as to the giving of notices and deposit of plans and sections), and any provisions in any local Act dealing with the construction of new buildings, and any byelaws made with respect to new buildings under any local Act, shall not apply in the case of any new buildings being school premises to be erected, or erected, according to plans which are under any regulations relating to the payment of grants required to be, and have been, approved by the Board of Education." As to the meaning of the words "provisions . . . dealing with the construction of new buildings," see *Higgs and Hill, Ltd.* v. *Stepney Borough Council*, [1914] 1 K. B. 505; 78 J. P. 134; *Holliday and Greenwood, Ltd.* v. *District Surveyors' Association*, [1914] 2 K. B. 803; *Akers and Co.* v. *Daubney*, (1915) 79 J. P. 516. On the subject of schools, reference may be made to the Board of Education's "Building Regulations" of June 18th, 1907, and a memorandum of the L. G. B. (February, 1910) upon the sanitary arrangements of schools.

Buildings exempt from operation of byelaws.

See also the power to relax byelaws given by the Ancient Monuments Consolidation and Amendment Act, 1913, s. 18 (App. I., *post*, Vol. II.), to permit the erection of buildings in a style harmonising with other buildings of artistic merit.

Even in the absence of express exemption (such as is found in the Model Byelaws) the byelaws do not bind the Crown (*Gorton L. B.* v. *Prison Commissioners* (1887), [1904] 2 K. B. 165 n.; 68 J. P. 27).

A water company, empowered by their special Act merely to erect a high-service water tower in a particular situation, were held not to be exempt from byelaws under the text requiring the delivery of certain notices before work was commenced (*Uckfield R. D. C.* v. *Crowborough Water Co.*, [1899] 2 Q. B. 664; see also *London C. C.* v. *Wandsworth and Putney Gas Co.* (1900), 64 J. P. 500; 82 L. T. 562, and cognate cases collected in *Moran & Sons, Ltd.* v. *Marsland*, or cited therewith on p. 24, *ante*).

Where byelaws contained an exemption for any building (not being a dwelling-house) erected or intended to be erected in connection with any mine, or intended to be used exclusively for the working of such mine, it was held that the exemption covered a brick kiln used for firing bricks got out of a fireclay mine which would not have been worked at all unless the kiln had been used (*Tylecote* v. *Morton* (1901), 66 J. P. 136; 85 L. T. 692). Buildings of certain dimensions not constructed or adapted to be used either wholly or in part for human habitation, or as a place of habitual employment for any person in any manufacture, trade or business, were exempted from certain byelaws. A building, of which one end was used as a cement store, the middle portion as a timber store, and the other end as a stable, was held to come within the exemption (*Linzell* v. *Felixstowe and Walton U. D. C.* (1904), 68 J. P. 208; 90 L. T. 388).

Making, etc. of byelaws.

(*a*) See as to the making, confirming, and publication of byelaws, ss. 182—186; and as to enforcing them, s. 251.

Though an urban authority be otherwise empowered to make byelaws on these subjects, presumably they may nevertheless act under this section: see s. 341, *post*.

Authority cannot dispense with

The byelaws made under this section, extended as above stated, are the most important with which a local authority have to deal. It may be opportune, therefore, to remark here that unless the byelaws themselves, or some statute (*e.g.*, the Ancient Monuments Consolidation and Amendment Act, 1913, s. 18, noted *supra*), give the authority a dispensing power or discretion, the authority are bound by them and cannot waive their requirements (*Baxter* v. *Bedford* (1885), 1 T. L. R. 424; *R.* v. *Newcastle-upon-Tyne (Mayor, etc. of)* (1889), 53 J. P. 788; 60 L. T. 963; *In re Macintosh and Pontypridd Improvement Commissioners* (1891),

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61 L. J. Q. B. 164; 8 T. L. R. 128; affirmed (1892), 8 T. L. R. 203; *Att.-Gen.* v. *Folkestone Corporation*, p. 338, *post*), but see s. 24, Housing, Town Planning, etc. Act, 1919, as to relaxation of byelaws in carrying out a housing scheme.

compliance with byelaws.

Therefore the approval by an authority of building plans which contravene the byelaws made by that authority is illegal and inoperative (*Yabbicom* v. *King*, [1899] 1 Q. B. 444; 63 J. P. 149). Even where a local Act contains in a section repealing previous byelaws a proviso saving approved plans, such saving refers only to plans legally approved (*ibid.*).

Ratepayers issued a writ claiming an injunction (1) to restrain the authority from approving plans deposited for a rival place of amusement and alleged to contravene the byelaws, (2) to restrain the authority from refusing to allow inspection of such plans by the plaintiffs, and (3) to restrain the owners from carrying out the plans. An *interim* injunction was refused, as to (1), because the plans had in fact been approved while the motion was pending; as to (2), because the injunction asked for was in effect mandatory, and could not be granted on an interlocutory application; and as to (3), because the Attorney-General was not a party, and an amendment would not be allowed for the purposes of an interlocutory motion (*Dover Picture Palace, Ltd.* v. *Dover Corporation and Others* (1913), 11 L. G. R. 971).

The fact that byelaws contain no proviso enabling an authority to make an exception in an exceptional case does not render them unreasonable and therefore invalid (*Salt* v. *Scott-Hall*, [1903] 2 K. B. 245; 67 J. P. 306; *Pomeroy* v. *Malvern U. D. C.* (1903), 67 J. P. 375). The M. of H. are, in fact, opposed to byelaws which reserve a discretionary power to the authority or their officers (see p. 440, *post*). They state that byelaws in such a form are uncertain in their operation (see cases in note to s. 182, *post*, p. 434, as to the necessity for "certainty" in byelaws), and that in their opinion byelaws, enforceable by penalties, should, as far as possible, prescribe definite requirements, and should not be dependent in any way upon the exercise of a discretionary power by the authority or their officers. It must be presumed that in a proper case the authority will not prosecute for a trivial breach, or that the justices will take advantage of the provisions of s. 1 of the Probation of Offenders Act, 1907 (*Pomeroy* v. *Malvern U. D. C., supra; Leyton U. D. C.* v. *Chew*, [1907] 2 K. B. 283; 71 J. P. 355; and *cf. Dunning* v. *Trainer* (1909), 73 J. P. 400; 101 L. T. 421).

Authority should consider whether owner is able to carry out plans as submitted.

An authority should be careful to see that a builder, whose plans they sanction, is able to comply with the byelaws. T., having land upon which he proposed to build six houses, sent in a notice and plan showing what he intended to do, and, where a new street ten yards wide was to be. The local board sanctioned the houses, and they were built. Some years afterwards T. was summoned for disobeying a byelaw in not leaving a space thirty feet wide for the street. The fact was that his land extended only nine feet in front of the houses, but this was not known to the board until afterwards. T. having been convicted, it was held that the conviction was wrong, and that the board ought to have satisfied themselves before sanctioning the plan that he had land of sufficient width to make the proposed new street when the houses should be completed (*Thompson* v. *Failsworth L. B.* (1881), 46 J. P. 21).

A building owner deposited plans showing, *inter alia*, a new street of the minimum width allowed by the byelaws. Part of the site of such new street was a field subject to a restrictive covenant which would prevent it being used for a street. It was held that the authority were entitled to disapprove the plans on the ground that the existence of the covenant made it impossible to construct the street of the width shown on the plans (*R.* v. *Tynemouth Corporation*, [1911] 2 K. B. 361; 75 J. P. 420); see also cases in note (*d*) to s. 158, *post*, p. 354.

Buildings specially exempted by model byelaws.

The Model Byelaws (Urban Code) of the M. of H., which have been carefully edited by Messrs. Mackenzie and Handford, provide for the exemption of the following buildings from their operation:

(a) Buildings in the possession of or used or intended to be used for the purposes of the Crown.
(b) Lunatic asylums.
(c) Prisons.
(d) Buildings (not being dwelling-houses) belonging to statutory bodies authorised to navigate on or use any river, canal, dock, harbour, or basin;
(e) Buildings (not being dwelling-houses) in connection with mines;

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(f) Buildings approved by the Board of Agriculture and Fisheries for the improvement of land;
(g) Buildings appoved by a Secretary of State;
(h) Plant-houses, greenhouses, or conservatories;
(i) Orchard-houses, summer-houses, poultry-houses, boat-houses, coal-sheds, garden-tool houses, potting-sheds, cycle-sheds, or aviaries, under certain conditions;
(j) Buildings which shall not exceed in height 30 feet, and in extent 125,000 feet, not public buildings, and not constructed for human habitation, or employment in manufacture, trade, or business, and which are distant at least 8 feet from the nearest street, and at least 30 feet from the nearest building, and from the boundary of any adjoining premises;
(k) Similar buildings exceeding in height 30 feet, distant at least 20 feet from nearest street and 50 feet from nearest building.
(l) Similar buildings exceeding the dimensions mentioned in the exception (j) *supra*, which are 30 feet from the nearest street, and at least 60 feet from the nearest building, and from the boundary of any adjoining premises;
(m) Temporary hospitals for infectious cases.
(n) Tuberculosis hospitals.

The "intermediate" and "rural" exemption clauses differ from the above. The latter contains an exemption in favour of any building which shall not be a public building or a building of the warehouse class, and shall not be constructed or adapted to be used either wholly or partly for human habitation, or as a place of habitual employment for any person in any manufacture, trade, or business, and which if intended for use as a pigstye or a cowhouse shall be detached from any dwelling-house.

Further clauses may be added to allow the use of galvanized, corrugated, or sheet iron buildings, subject to precautions against their use for human habitation and for the prevention of fire.

See also the other exemptions and the decisions noted on p. 329, *ante*.

"New street."

(*b*) It has already been noticed that an ancient highway may become a new street within the meaning of this and other sections of the Act if houses are built along its sides so as to make it a street in the ordinary acceptation of the term (*Pound* v. *Plumstead District Board of Works*; *Dryden* v. *Putney* (*Overseers of*); *Robinson* v. *Barton Eccles L. B.*, *ante*, p. 17; *Att.-Gen.* v. *Rufford*, *post*, p. 334. See also *Hampstead Vestry* v. *Cotton* (1885), 16 Q. B. D. 475; 50 J. P. 453; (1886), 12 App. Cas. 1; 51 J. P. 340; *Holden* v. *St. Mary, Islington* (*Vestry of*) (1886), 2 T. L. R. 740). In *Robinson* v. *Barton Eccles L. B.*, *supra*, JESSEL, M.R., said (21 Ch. D., at p. 632): "There are two ways in which a street may come into existence where there was no street before. A person may take a grass field, or a country lane (for, in my opinion, it makes no difference whether or not there was a public highway and lane, or a foot-path existing before, which is thrown into the street, and is utilised, or whether there was nothing but a mere plot of grass land out of which a new roadway is made), he may take it and build continuous lines of houses so as to form what is commonly known as a street. When I say continuous lines, I do not mean that there are to be no breaks or intervals, but there must be a certain degree of continuity. A new street may arise in another way, and that is, where it is not from the first laid out as a street in a formal manner, but may be considered to grow up, so to say, of itself. This often happens where there is an existing highway, and people build houses along the sides of that highway, so that without any intention of laying out a street, the street grows. When does it become a street? This question cannot be answered until you know the locality. It must be a question in each particular case when the road becomes a street. At some time or other it becomes a street, and as soon as it does so it is a new street and not the less a new street because some of the houses were built before it was a street." In the same case, when before the House of Lords, Lord SELBORNE, L.C., referring to the definition of "*street*" in s. 4, *ante*, p. 15, said that "the definition was not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there was nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." And he continued: "I look upon this portion of the

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interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by *new street* a place which before had not that character, but which by the construction of buildings on both sides, or possibly on one side, has acquired it" (8 App. Cas. 798, at p. 801; 48 J. P. 276). And see also *St. Giles, Camberwell (Vestry of)* v. *Crystal Palace Co.*, [1892] 2 Q. B. 33; 57 J. P. 5; approved in *Davis* v. *Greenwich District Board of Works*, [1895] 2 Q. B. 219; 59 J. P. 517; *Allen* v. *Fulham Vestry*, [1899] 1 Q. B. 681; 63 J. P. 212; *Clerkenwell Vestry* v. *Edmondson*, [1902] 1 K. B. 336; 66 J. P. 324.

In *Att.-Gen.* v. *Gibb*, [1909] 2 Ch. 265; 73 J. P. 343, PARKER, J., held that the words "new street" in s. 157 were not confined to new streets in the popular sense of roadways with houses on either side, but may include lanes, alleys and passages, not intended to have houses on either side. In that case G. employed a builder to erect cottages, and the builder deposited plans showing that he intended to erect them sixty-seven yards from the road with an approach consisting of a footpath five or six feet wide. The surveyor pointed out to the builder that such an approach would not satisfy the "new street" byelaws; and the builder, without consulting G., said that a roadway of the required width would be made at the termination of a tenancy over other land belonging to G., and sent in an amended plan showing such road. The surveyor and chairman gave provisional consent to the plans and allowed the work to be commenced, and subsequently the plans were approved subject to a condition that the road should be made up, and the builder wrote saying that the road would be made in due course, but for the present paths would be made. In the result a pathway was formed 202 feet long, and no road was made within a reasonable time. In an action against G. and the builder for (1) a declaration that they had laid out a "new street" in contravention of the byelaws by reason of the same not being thirty-six feet wide and not having been constructed for use as a carriage road, (2) a mandatory injunction or order requiring them to widen the said new street, it was held that the footpath was a new street, that the builder was G.'s agent, and that an injunction should be granted against G.; as against the builder the claim was dismissed.

By the Burgh Police (Scotland) Act, 1903, s. 11, a warrant is not to be granted for the erection of any buildings abutting on a "new street" until a warrant has been granted for the formation of such street. An owner of land abutting on an unformed road over which the public had a right of passage for all kinds of traffic proposed to build thereon. An opinion was expressed that the erection of houses along the road would not cause it to become a "new street" (*Glasgow and S. W. Rail. Co.* v. *Hutchinson*, [1908] S. C. 587).

Dedication not necessary.

It is not necessary that the new street should be dedicated to the public (*St. Mary, Islington (Vestry of)* v. *Barrett, ante, p.* 289). See also *Bowles* v. *St. Mary, Islington, ante*, p. 18. In general, whether ground forms part of a street, or is private property, is a question of fact (*Bell* v. *Great Crosby U. D. C.* (1913), 77 J. P. 37; 108 L. T. 455).

What amounts to "laying out" a new street.

Decisions under Metropolitan Acts.

By the Metropolis Management Act, 1862, s. 98, no existing road, etc. might be "formed or laid out for building as a street" for carriage traffic until widened to forty feet. With reference to this provision, BLACKBURN, J., said: "Whether an intended building is sufficient to make a street is a question of more or less; one house would not be sufficient. Whether the intended houses are sufficiently numerous and continuous is a question of degree, and must be a question of fact for the magistrate. When may the owner be said to have begun to lay out the road for that purpose? I do not think that if a person merely puts up a hoarding or leaves the way without any fence, or leaves the old fence untouched while he is building, he can be said to have laid out the road; but as soon as he begins to put up fences, and marks out the boundary, which he intends to be the permanent boundary between his building and the road, then he may be said to have begun to lay out the road for the forming of the street; and this also is a question of fact

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for the magistrate" (see *Taylor* v. *Metropolitan Board of Works* (1867), L. R. 2 Q. B. 213; 31 J. P. 581). In that case plots of land had in 1864 been sold for building purposes. These plots abutted on a lane which was an ancient carriageway, and had old buildings at intervals on both sides. The lane varied in width from forty-one to twenty-eight feet; opposite the plots it was twenty-eight feet only, and on the other side of the road was a permanent enclosure belonging to a church, and other old buildings. In July, 1865, A. bought the plots, houses having been erected on two of them, the front walls of the houses being twenty-seven feet from the old wooden fence of the lane. On September 26th he began to remove the fence, which had been left untouched, and to substitute a permanent wall and railing. The magistrate found that he thereby commenced to form and lay out the road for building as a street. It was held that he was properly convicted under s. 89 of the Act of 1862, but that the section would have been satisfied had A. set back his fence to a distance of twenty feet from the crown of the road, although the result would have been to leave the road less than forty feet wide. This case may be compared with one decided in the following year under the same section. The respondent was the owner of land upon which he had in 1866 erected some houses. The gardens at their backs abutted upon an ancient lane, and some of the owners of land adjoining this lane had in 1867 begun to form it into a street for carriage traffic within the meaning of the section. The respondent himself had done no act towards forming or laying out the lane as a street for the purposes of carriage traffic, except that in 1866 he removed an old bank and thorn fence and substituted an oak fence three feet within his own land, nor had he any intention of doing any such act, or of putting up any building fronting towards the lane:—*Held*, that he had not infringed the section, and was not bound to set back his oak fence so as to leave a space of twenty feet between it and the centre of the lane (*Metropolitan Board of Works* v. *Clever* (1868), L. R. 3 C. P. 531). It had previously been held that the section did not apply when new buildings abutted in the rear upon an old lane of less width than forty feet (*Metropolitan Board of Works* v. *Cox* (1865), 19 C. B. (N.S.) 445).

The widening of an old approach to a block of buildings newly erected for workmen's dwellings, and let out in separate tenements, was held not to constitute "the formation or laying out of a new street" within the meaning of the Metropolis Management Act, 1882, s. 8, being intended only for the occupiers' use (*Metropolitan Board of Works* v. *Nathan* (1885), 50 J. P. 502; 54 L. T. 423). For later decisions under London Acts, see p. 335, *post*.

Decisions under byelaws.

W. had ground abutting on one side of a lane, 250 feet long and six feet wide, adjoining a town. There were no houses in the lane. W. built six cottages standing back fifteen feet from the lane. The lane was within an urban district, the byelaws of which required new streets (not being carriageways) to be eighteen feet wide. W. was convicted of having "laid out a new street" contrary to the byelaws. It was held that the conviction was wrong, the mere fact of six cottages being built in the lane not making it a new street (*Williams* v. *Powning* (1883), 47 J. P. 486; 48 L. T. 672).

The subsequent erection of piers and gates in a street which had been laid out eight years previously was held not to be the construction of a "new street" (*Tarrant* v. *Woking U. D. C.*, *post*, p. 337).

In a case where five houses had been built fronting a new road or way seven feet wide, the defendant acquired the land opposite the houses and built along the edge of the land a wall 170 yards long. He was held rightly convicted of "laying out a street" of less width than that prescribed by the byelaws (*Roberts* v. *Richards* (1890), 54 J. P. 693). Lord ESHER, M.R., said: "I think what the defendant did was to construct a new street under the circumstances . . . He seems to think that the person who takes the first step towards a new street should so lay it out that it should be for the benefit of others who afterwards join in completing the street. Why should the previous owners be made to contribute to the requirements of the new street if what they did at the time was nothing unlawful?" With reference to what amounts to the laying out of a new street, the same learned judge said, in *Robinson* v. *Barton Eccles L. B.* (1882), 21 Ch. D., at p. 636: "It is often a difficult thing to say when a street begins to be a new street—that is, when it begins to alter its character. New streets may be made under different circumstances. The whole land on both sides may belong to one owner. Then suppose he conceives a design of making a new street, and has a plan drawn. To my mind, that does not begin

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the laying out of the street within the meaning of the Act of Parliament. The Act of Parliament is not concerned with what people do upon paper, but with what they do in point of fact and upon the land. When would such an owner begin to lay out and form a street? To my mind, he would do so when he built his first house, having the intention to go on to make a street. He would then have begun to lay out and form a street, and it would from that moment begin to be a street. But streets may be formed in another way. Supposing that along the line of that which would eventually be considered a street there are a great many owners. No one of them could make a plan for the whole, but it may be clear that all of them are intending to build with regard to and so as to utilise an existing roadway. How, then, will those people lay out and form a street? Each of them, by what he does on his own land, would be taking part in laying out and forming a street. Which of them begins? I should say the one who first begins to build begins to form a street, and if you find that there are several proprietors along a line, each of whom acts so that the tribunal comes to the conclusion that all of them intend to build in the same direction, then the tribunal would have the right to say that there is a common intention amongst all these prople to build in a particular course which will produce a street, and, therefore, the first of them who, in virtue of that common idea, begins to build, is beginning to form and lay out a street, and he and all others are subject to the jurisdiction of the board. There is another case to which my lord has alluded, where there are several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build. One man at the end of the street may have begun to build, but the others have not built nor laid out their land as building land, nor advertised it as building land, nor done anything to show an intention to build. Then the street really forms itself, as it were, by gradual accretion without any common intent. In such a case you have to wait until you can see by the course of building that there is a common intent to build. The moment you see that, you come to the conclusion that a street has begun to be formed."

Byelaws provided that every person who should lay out a new street exceeding 100 feet in length, should lay out such street as a carriage-road, with footways, and of a width of not less than thirty-six feet. The appellant was lessee of a plot of land with a right of way over an adjoining road fifteen feet wide for a distance of more than 100 feet. He commenced to build two houses on the plot, but did not widen the road over which he had a right of way. He was summoned for "laying out a new street" of width of less than thirty-six feet, contrary to the byelaws, and convicted; but it was held on appeal that what he had done in commencing to erect the houses on the plot adjoining the road did not amount to laying out a new street, and the conviction was quashed (*Gozzett* v. *Maldon Urban Sanitary Authority*, [1894] 1 Q. B. 327; 58 J. P 229). In another case, under similar byelaws, an authority sought to restrain the defendant from "laying out a new street" contrary to the byelaws under the following circumstances. There was a narrow passage or lane, about eight feet wide and 175 feet long, ending in a *cul-de-sac*. On its eastern side was a row of cottages, to the front entrances of which it gave access, and on its western side was a strip of land formerly used as gardens for the cottages on the eastern side. The defendant bought this strip of land, and built on it three houses fronting into a public thoroughfare out of which the passage or lane in question led, and the side of the corner house of the three abutted on the passage or lane. It was held that the question was entirely one of fact, and that there was no evidence that the defendant had made or was intending to make a new street, and an injunction was refused (*St. George's L. B.* (*Bristol*) v. *Ballard*, [1895] 1 Q. B. 702; 59 J. P. 131).

By s. 63 of the Towns Improvement Clauses Act, 1847, it is not permissible to lay out or make any new street unless it is of a prescribed width. A country lane 580 yards long, near a town, had hedges on both sides. The defendants owned buildings extending along one side of the lane for 160 yards, and they proposed to erect on the other side directly opposite other buildings with a frontage of 110 yards to the lane:—*Held*, that to do so would convert the lane into a new street, and that the requirements of s. 63 as to width must be observed (*Att.-Gen* v. *Rufford*, [1899] 1 Ch. 537; 63 J. P. 232).

B. was the owner of a piece of land on one side of a road which was 160 yards long and of less width than that required by the byelaws for a new street. On the roadside of B.'s land was a wooden fence. This fence B. removed, and on its

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site built a wall and subsequently proposed to build a house inside the wall. The opposite side of the road was defined by a wall enclosing a dwelling-house. The justices were of opinion that B. had defined the line of road and had converted the road into a new street, and convicted him of "laying out a new street" not in accordance with the byelaws. It was held that there was no evidence of laying out a new street and the conviction was quashed (*Bushell* v. *Creer* (1900), 64 J. P. 600).

Effect of more recent decisions; physical interference with soil of street necessary.

The more recent decisions appear to show that the "laying out" of a street referred to in the byelaws means something in the nature of a "physical" laying out—some work being actually done to the surface of the new street,—and that a mere "metaphorical" laying out—closing in a lane by erecting buildings alongside it—is not sufficient. The owners of a triangular plot of land, two sides of which abutted upon public highways, erected thereon certain houses without removing the fences, in which they made openings here and there so as to provide access from the roads to the houses. They did not attempt to alter or interfere with the roadways. The local authority claimed an injunction to restrain them from laying out or constructing the roads as new streets in breach of byelaws as to width, etc. The Court of Appeal held that the judge was justified in drawing the inference that the owners were not laying out or constructing a new street within the meaning of the byelaws (*Devonport Corporation* v. *Tozer*, [1903] 1 Ch. 759; 67 J. P. 269). The same conclusion was arrived at by a Divisional Court upon the following facts: An owner of a strip of land fronting an occupation road fifteen feet wide (the soil of which did not belong to him) cut up the land into plots, but reserved a strip six feet wide along the whole of the frontage to the lane. He sold four of the plots; and after the erection of houses thereon, took away the hedge between the reserved strip and the road opposite the plots sold, throwing the portions of the reserved strip opposite the plots sold into the lane (*Fellowes* v. *Sedgeley U. D. C.* (1906), 70 J. P. 412; 4 L. G. R. 970). See also *Greenwood* v. *Queensbury U. D. C.* (1906), 3 Architects' L. R. 145, and *cf. Mason* v. *Rodger*, [1913] S. C. 52.

The defendant, a builder, bought some land abutting on H. Road. It was then a field, surrounded by a hedge. The defendant built a row of houses on the side abutting on H. Road, and put gates in the hedge as each house was completed, with cement paths leading from the gates to the doors. The strip of land between the houses and the road was not made part of the road, nor did the defendant propose to make it so. It was held that he was not "laying out" H. Road as a new street (*Att.-Gen.* v. *Dorin*, [1912] 1 Ch. 369; 76 J. P. 181).

Decisions under London Building Act.

Reference may also be made to the following decisions under the London Building Act, 1894, ss. 7, 8, 10, as to "commencing to lay out or form" and "adapting for use" streets: *London C. C.* v. *Dixon*, [1899] 1 Q. B. 496; 63 J. P. 390; *Armstrong* v. *London C. C.*, [1900] 1 Q. B. 416; 64 J. P. 197; *London C. C.* v. *Davis* (1904), 68 J. P. 520; 91 L. T. 555; *London C. C.* v. *Heathman* (1905), 69 J. P. 222; 3 L. G. R. 1016; *London C. C.* v. *Collins* (1905), 69 J. P. 401; 93 L. T. 540; *London C. C.* v. *King* (1905), 69 J. P. 406; 3 L. G. R. 1046. For earlier decisions under London Acts, see pp. 332, 333, *ante*.

"New street" a question of fact.

It is to be observed that in *Williams* v. *Powning*, *ante*, p. 333, the court considered the evidence and decided that there was no evidence to justify the finding of the justices that the street was a new street. But, if there is any evidence, the court will not inquire into its sufficiency, for the question is one of fact for the justices. See *R.* v. *Shiel* (1884), 50 L. T. 590. See also *Gozzett* v. *Maldon Urban Sanitary Authority* and *St. George's L. B.* (*Bristol*) v. *Ballard*, *ante*, p. 334, and the observations on this subject in the notes on s. 4, *ante*, p. 17.

Person "who lays out" a new street.

An owner of land gave notice to the authority of his intention to lay out certain new streets, including a certain back street, and deposited plans of such streets. Notice was also given by a builder of his intention to dig and lay out the foundations of four cottages in the back street, and a plan of such street was deposited by him. In the plans deposited by the owner and builder, the back street, in which it was intended to build the cottages, was shown to be only twelve feet wide, whereas the minimum width required by the byelaws was eighteen feet. The authority gave to both the owner and the builder notice of their disapproval of such plans, and on the builder proceeding to build the cottages according to the disapproved plans, they summoned him for laying out a new street of insufficient width, contrary to the byelaws. It was held that such summons was rightly dismissed, as the owner, and not the builder, was the person who had laid out the street (*Sunderland* (*Mayor of*) v.

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Brown (1880), 44 J. P. 831). *Per* HAWKINS, J.: "All that the builder was employed to do was to build certain cottages upon the line of a street already laid out." See also *Att.-Gen.* v. *Gibb*, p. 332, *ante*; *Brown* v. *Edmonton L. B.*, p. 356, *post*, and cases cited therewith; and *Welsh* v. *West Ham Corporation* (as to continuing offences), p. 357, *post*, and cases cited therewith; *cf.* also *Att.-Gen.* v. *Ashbourne Recreation Ground Co.*, [1903] 1 Ch. 101; 67 J. P. 73.

Byelaws as to "width and construction" of streets.

An authority made the following byelaw: "Every person who constructs a new street shall cause the kerb of each footpath in such street to be put in at such level as may be fixed or approved by the urban sanitary authority. No person shall commence the erection of a new building in a new street unless and until the kerb of each footpath therein shall have been put in pursuant to the preceding requirement. Every person offending against this byelaw shall be liable for each offence to a penalty of forty shillings." It was held that this byelaw was void as being unreasonable (*Rudland* v. *Sunderland Corporation* (1884), 49 J. P. 359; 52 L. T. 617). "If it applied only to the particular piece of the street opposite to that on which a man might be going to build, there might be some ground for arguing that it was reasonable; but it is not so, for if it means anything it means that each owner must wait until the whole kerb is put in": *per* GROVE, J. "I doubt whether the authority has power to make these provisions with respect to matters which have been specifically provided for by s. 150, since they amount to imposing on landowners an absolute duty to do certain things under pain of incurring a penalty, while that section merely provides that if they decline to do them there shall be no penalty, but the authority shall themselves do them and recover the expenses": *per* HAWKINS, J. In connection with the latter *dictum*, reference may be made to *Leyton U. D. C.* v. *Chew*, [1907] 2 K. B. 283; 71 J. P. 355. There, the authority had made a byelaw that in the case of certain classes of streets there should be constructed on each side of the street a proper channel of a given size "either of granite cubes laid on a bed of cement concrete at least six inches in thickness, or otherwise in a suitable manner and with suitable materials." It was held that such byelaw was not bad for being inconsistent with s. 150 of the P. H. A., 1875, and ss. 6 and 7 of the Private Street Works Act, 1892.

By the Sunderland Improvement Act, 1885, by s. 37, it shall not be lawful for any person, except with the consent of the corporation, to erect or build, or begin to erect or build, any new building abutting upon any new street or part of a new street, unless the corporation shall have previously approved of the level and available width of such new street or part of a new street, nor until the carriageway and footway of such new street, or part of a new street, shall have been formed to such a level and of such a width, and constructed and sewered to the satisfaction of the corporation, in accordance with s. 150 of the Public Health Act, 1875. The appellants, who were builders, gave notice to the corporation of their intention to lay out a certain new street, and the plans for its construction were approved. They subsequently gave notice that they intended to erect four new houses in that street, and the plans for these were also approved. The appellants began to erect these houses abutting upon a part of the new street which had been sewered, paved, flagged, and channelled to the satisfaction of the corporation. The rest of the new street had not been constructed and made good to the satisfaction of the corporation within s. 37 of the local Act. The appellants were summoned for infringing that section, and were fined:—*Held*, that the conviction was right, for, as the appellants had given notice to lay out the whole of a new street, the corporation, under the local Act, were entitled to withhold their consent to the erection of any house or building abutting on it until the whole was constructed and sewered to their satisfaction (*Woodhill* v. *Sunderland* (*Mayor, etc. of*) (1887), 52 J. P. 5; 57 L. T. 303).

In *Baker* v. *Portsmouth Corporation* (1878), 3 Ex. D. 157; 42 J. P. 278, BRAMWELL, L.J., said that "the words of sub-s. (1) include the construction of the buildings, and the buildings themselves and front gardens, or whatever else, is at the side of the roadway." See also *Robinson* v. *Barton Eccles L. B.*, p. 331, *ante*, *per* Lord SELBORNE, L.C. In the *Portsmouth Case* a byelaw was held to be valid which provided that no building should be erected by the side of any new street, or to which any new street would form the only carriage approach, until such street had been constructed to the approval of the authority; but see *Rudland* v. *Sunderland Corporation*, *supra*, and *Leyton U. D. C.* v. *Chew*, *supra*, *per* PHILLIMORE, J. The

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Barton Eccles Case apparently decides that a byelaw cannot be made under this subsection for the purpose of regulating the line of buildings, for the word *street* as here used means the public way, and not the distance from the external wall of a house (as distinct from its curtilage) on one side of the street to the external wall of the opposite house (if there is one) on the other side. The byelaw in that case provided that every new street should be laid out and formed of such width and at such level as the authority should in each case determine. The House of Lords held, reversing the decision of the Court of Appeal, that the word "width" in the section and in the byelaw meant width of roadway, and not width between houses on each side of the street; and that the authority were not entitled under the byelaw to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway.

The Ministry of Health do not consider that an urban authority has power to prescribe a building line in new estates by means of a byelaw under s. 157. See also the case of *Robinson* v. *Barton Eccles L. B.*, *supra*.

Byelaws provided: ". . . (4) Every person who shall lay out a new street shall so lay out such street that the width thereof shall be forty feet at least . . . (6) Every person who shall construct a new street shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards":—*Held*, that the sixth byelaw was *intra vires* and reasonable, and that it prevented a landowner from constructing a new street upon his land until he had provided an entrance to the new street of the specified width, even though the entrance could only be made upon the land of another person over whom he had no control:—*Held*, also, that the "construction" of a new street included the building of the houses abutting on it, and, consequently, that the landowner could not, until an adequate entrance had been provided, erect houses abutting on the proposed new street (*Hendon L. B.* v. *Pounce* (1889), 42 Ch. D. 602).

In *Bromley L. B.* v. *Lloyd* (1892), 56 J. P. 278; 66 L. T. 462, a person desired to construct a new street upon his own land. The proposed entrance to it was a public lane of a width varying from twelve to twenty feet upon byelaws similar to those in the last case. Kekewich, J., held that the person proposing to construct the new street was under an obligation, before constructing it, to provide an entrance of the width prescribed by the byelaws, and, further, that the fact that the entrance proposed was a public road did not alter such obligation if that road was of less than the prescribed width, and he, therefore, granted an *interim* injunction. But when the case was tried before Wills, J., he gave judgment for the defendant on the ground that the entrance required by the byelaw meant merely a practicable way into the street (1893), 9 T. L. R. 306).

Where byelaws required that the entrance to any new street should be thirty-six feet wide at the least, the local authority were held justified in refusing to pass plans for the construction of a new street showing an entrance of less than thirty-six feet wide, consisting of an existing street outside their district (*Barton Regis R. D. C.* v. *Stevens* (1896), 61 J. P. 598; 12 T. L. R. 347).

When a new street has once been constructed of the width required by the ordinary byelaws, it is not an offence thereunder to subsequently narrow it, *e.g.*, by the erection of gate piers therein; and, *semble*, a byelaw prohibiting any alteration of the original width would be *ultra vires* (*Tarrant* v. *Woking U. D. C.*, [1914] 3 K. B. 796; 79 J. P. 22).

The byelaws of a local board required that every person laying out a new street should, if it were a principal street, lay it out at least thirty-six feet wide. In 1875 the board approved the plan of an estate showing a street as intended to be laid out thirty-six feet wide. In 1887 the relator built three houses in the street according to plans approved by the board; and in 1895 he sought an injunction to restrain the defendant Bell from building so as to cause the street to be of less width than thirty-six feet. North, J., refused an injunction because there was nothing to show that this was a "principal" street within the meaning of the byelaws (*Att.-Gen.* v *Pudsey L. B. and Bell* (1895), 59 J. P. 329; 39 Sol. J. 315).

In the town of Goole certain ways existed communicating with the backs of houses, and used by the authority (who did the scavenging of the town) for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval showing ways, such as above described, of the

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width of six feet; but the authority, who had made a byelaw prescribing ten feet as the minimum width of "new streets," refused to approve such plans. It was held, discharging a rule for a *mandamus* to compel approval, that the ways in question were "passages" within the meaning of s. 4, and, therefore, "streets" within the meaning of that section, and that, therefore, the authority had power by s. 157 (1) to make byelaws with respect to their width and construction, and the byelaw was valid (*R.* v. *Goole L. B.*, [1891] 2 Q. B. 212; 55 J. P. 535).

The Manchester Improvement Act, 1845, s. 29, provided that no street should be made of less width than twenty-four feet; and s. 20 provided that it should not be lawful to build within the borough any houses with their fronts facing each other, which should be separated from each other by a space of less than twenty-four feet wide. It was held that these provisions prohibited the erection in a street of two houses at the same time, with their fronts facing each other, within the prescribed distance, but did not affect the erection of buildings not in a street (*R.* v. *Sidebotham* (1859), 28 L. J. M. C. 189; 23 J. P. 342).

The F. Improvement Act incorporated the Towns Improvement Clauses Act, 1847. By s. 69 of the former Act, it was provided that no new street to be thereafter laid out, should be of less width than forty feet, but by the general Act, which came into operation in cases which were not provided for by any special Act, the extreme width of new streets intended for the use of carriages was fixed at thirty feet. A street had some years previously to 1873 been laid out with a roadway of twenty-five feet, but the corporation had given notice that they should enforce the clause providing for a width of forty feet. They subsequently, upon the application of the defendant, waived that notice and approved a carriageway of twenty-five feet. It was held that s. 69 was imperative, and that the corporation could not permit a deviation from the Act. It was also held, that though the road had been laid out previously, the corporation were not bound to interfere until the building operations were actually commenced and the width of the road definitely fixed (*Att.-Gen.* v. *Folkestone* (*Corporation of*), W. N. (1873), p. 127).

In 1830, A. projected the formation of a seaside town to be built on his land, and a plan was prepared showing the sites of various proposed roads, streets, and squares. In 1833 a private Act was passed, whereby the lands described on the plan were made a distinct parish for the purposes of the Act, and commissioners were appointed in whom were vested all roads, streets, and ways, then made and used by the public, or thereafter to be made and adopted by the commissioners under the Act. Before this Act passed, A. had sold to B. several of the plots described on the plan. Before and after the Act numerous houses had been built, and some of the streets shown on the plan had been wholly or partially formed and adopted by the commissioners; but no houses had been erected on the land sold to B., which was still used as agricultural land. In 1868 the commissioners gave to B.'s devisees notice of their intention to take possession of the sites of the proposed streets, etc. on the land sold to B., and in 1871 they proceeded to take such possession. It was held that they had no right to do so, there being no roads actually made for them to adopt, and the sites as such not vesting in them (*Mackett* v. *Herne Bay Commissioners* (1877), 37 L. T. 812).

S., having an old farmhouse with a shop front abutting on a lane, and other property near, gave notice to the authority of his intention to lay out a street, and submitted a plan, which was approved, showing the alteration and proposed width of the new street, which involved the setting back of the shop and garden. He did nothing to carry out the plan, and two months later, put in a new shop front and rebuilt the garden wall on the old site. It was held that S. had done nothing contrary to the byelaw relating to the width of new streets, for he was entitled to abandon his plan notwithstanding the approval thereof (*Sunderland* (*Mayor, etc. of*) v. *Skinner* (1889), 53 J. P. 660).

A line of railway situate in a deep cutting was crossed by a bridge carrying a road. A line of houses terminated at the eastern end of the bridge; across the bridge there was but one cottage, and the roadway ceased to be a public thoroughfare, being closed by a private gate. It was held that the road ceased to be a new street within the meaning of the Metropolis Management Act, 1862, at the eastern extremity of the bridge (*L. B. & S. C. Rail. Co.* v. *St. Giles, Camberwell* (*Vestry of*) (1879), 4 Ex. D. 239).

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A street which leads out of and afterwards back into a public carriageway "communicates at both ends with a public carriageway" (*London C. C.* v. *Edmundson* (1892), 56 J. P. 343; 66 L. T. 200). Whether a street affords "direct communication between" two streets within s. 9 (4) of the London Building Act, 1894, is a question of fact (*Woodham* v. *London C. C.*, [1898] 1 Q. B. 863; 62 J. P. 342).

A street sixty feet wide, out of the further end of which leads a lane twenty feet wide, cannot be said to "terminate in a *cul-de-sac*" (*Stevenson* v. *Lee*, [1910] S. C. 14).

Where s. 17 of the P. H. A., 1907, *post*, has been applied to any district the authority may vary the position or direction and fix the beginning and end of new streets.

S. was convicted for non-compliance with a notice specifying certain irregularities in respect of the "laying out *or* construction" of a new street. The conviction was quashed on the ground that it was either void for uncertainty or bad as being for two offences (*R.* v. *Slater* (1903), 67 J. P. 299).

Byelaws as to sewerage.

(*c*) The model byelaws contain no clauses requiring the provision of sewers for the drainage of houses in new streets. "The reason for this is that the conditions which such byelaws must satisfy are, to so great an extent, dependent upon the varying circumstances of different localities" (L. G. B. Circular). The Board did not consider the matter to be one in regard to which byelaws could usefully be made. "It may be doubted," they said, "whether any powers which, under such byelaws, may be lawfully assumed by sanitary authorities, will, as regards extent and efficacy, compare with the powers which they derive from the express provisions of the Public Health Act." Of course under s. 150 of this Act, or under the Private Street Works Act where that Act has been adopted, an *urban* council can require owners to defray the cost of sewers before a street is taken over as a highway repairable by the inhabitants at large. The position of a rural council in this matter will be seen from the notes to s. 150, *ante*, p. 287.

But although the Central Department does not encourage the making of byelaws which require persons laying out new streets to provide soil sewers, they do not apparently object to a byelaw which requires a person voluntarily providing such a sewer to construct the same in a satisfactory manner. The latest model form requires a person constructing a new street to provide for the carrying off of surface water.

In the absence of any provisions in byelaws on the subject of sewerage, the authority cannot refuse to approve plans of new streets not showing any system of sewerage, but being in all respects in accordance with the byelaws (*R.* v. *Tynemouth R. D. C.*, [1896] 2 Q. B. 451; 60 J. P. 804).

A council were empowered to require the owner of land laid out for building on which any watercourse or ditch was situate, or which abutted on any watercourse or ditch, to execute such works as were in their opinion necessary to wholly or partially fill up or cover over such watercourse or ditch before proceeding to build. R. agreed to purchase some land abutting on a watercourse, and submitted plans for a factory which were approved subject to his culverting the watercourse. R. agreed to sell to O. a strip of land abutting on the watercourse, and conveyed it to O. on the same day as the land was conveyed to himself. The council, after the date of the conveyance, gave R. and O. notice to culvert the watercourse, but both ignored the notice and R. erected the factory. The council claimed against both a declaration that they were not entitled to commence, proceed with or maintain the factory without doing the works required by the council, and an injunction:—*Held*, that R.'s land did not abut on the watercourse, and that O., whose land did abut on it, did not intend to build, and that the action failed (*Att.-Gen.* v. *Rowley Bros.* (1911), 75 J. P. 81; 9 L. G. R. 121).

Chimneys and flues, etc.

(*d*) See the requirements of the Chimney Sweepers and Chimneys Regulation Act, 1840, as to chimneys. By s. 6 of that Act, "all withs and partitions between any chimney or flue . . . shall be of brick or stone, and at least equal to half a brick in thickness," upon pain of forfeiting a sum of money. A subsequent local statute enacted that in the borough of H. "the chimney and flues of every new building shall be constructed in such mode and of such materials and dimensions as shall from time to time be determined or approved by the corporation," and then, if no direction should be given by the corporation as to constructing chimneys, prescribed certain directions different from those in s. 6 of the Act of 1840. The appellant,

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within the borough of H., built a chimney which was not in accordance with the provisions of s. 6, and was convicted thereunder:—*Held*, that the subsequent local statute had not repealed s. 6, within the borough, and that the conviction was right (*Hill* v. *Hall* (1876), 1 Ex. D. 411; 41 J. P. 183). As to flues against party structures in London, see *Aërated Bread Co.* v. *Shepherd* (1897), 13 T. L. R. 311. See now as to chimneys, s. 24 of the P. H. A., 1907, *post*.

A byelaw provided: "Every person who shall erect a new building shall cause the back of every chimney opening in a party wall to be at least nine inches thick, and he shall cause such thickness to be continued at the back of the flue; such person shall cause the back of every other chimney opening to be at least four and a-half inches thick if such opening be in an external wall and nine inches thick if such opening be elsewhere than in an external wall, and he shall cause such thickness to be continued at the back of the flue. Provided that where flues are constructed back-to-back the thickness at the back of such flues may be not less than four and a-half inches." It was held that the proviso did not apply to flues in a party wall dividing adjoining houses (*Miller* v. *Field* (1914), 78 J. P. 5).

The sub-section does not refer to rooms nor to the interior of buildings beyond what may be necessary in connection with the subjects mentioned. See now as to the height of buildings, s. 24 of the P. H. A., 1907, *post*.

"New building."

(*e*) As to what may be a "new" building, see s. 159, *post*, p. 361, and the P. H. A., 1907, ss. 23, 33, *post*, and notes thereto. In *R.* v. *Foot's Cray U. D. C.*, [1916] 1 K. B. 246; 79 J. P. 521, the appellants who were the owners of an old building pulled down part of it including certain outer walls but left the remaining part of the premises standing, which part had been erected before byelaws came into existence. As required by the defendants' byelaws the appellant gave notice of their intention to erect a new part on the site of the part pulled down, and they submitted plans and sections of such new part to the defendants but gave no notice, plans and sections of the whole building, that is, the part left standing and the new part. It was held (overruling *Leonard* v. *Hoare & Co.*, [1914] 2 K. B. 798; 78 J. P. 287) that under s. 23 of the P. H. A. (Amendment) Act, 1907, the whole building, that is, the old part and the new part, was not to be deemed a new building, and therefore the appellants were not bound to send notices as to, and plans and sections of the whole building to the local authority. And see also *Repton School Governors* v. *Repton R. D. C.*, [1918] 2 K. B. 133; 82 J. P. 257, cited at p. 346, *post*.

Observe that in the sub-section the word "site" is not used. The use of that term in the 41 & 42 Vict. c. 32, s. 16, gave rise to the difficulty which came before the court in *Blashill* v. *Chambers* (1884), 14 Q. B. D. 479; 49 J. P. 388, where it was held upon the definition clause that the term did not include the subsoil below the foundation level. It is clear that the word "*site*," if used in any byelaw made under this Act, would not have the same limited meaning as in the Act above referred to.

As to buildings exempt from the operation of the byelaws, see pp. 329, 330, *ante*.

"Public building."

An ambulance station not structurally connected with any building, and from which the public were rigorously excluded, was held not to be a *public* building within the meaning of the Metropolitan Building Act, 1855, s. 3. This decision may be useful in construing byelaws referring to or excepting from their operation *public buildings* (*Josolyne* v. *Meeson* (1885), 49 J. P. 805; 53 L. T. 319. See also *Moses* v. *Marsland*, [1901] 1 K. B. 660; 65 J. P. 183).

"Domestic building."

As to the meaning of the term *domestic* building, see *Collins* v. *Greenwood*, on p. 345, *post*.

What is a "building."

An advertising company, the occupiers of a plot of land, which was already enclosed by wooden hoardings, raised these hoardings to a height of from thirteen to nineteen feet, putting inside stout uprights with stays, and connecting opposite hoardings by cross-pieces which acted as ties. The land within was used for preparing wood for hoardings to be used elsewhere. It was held on appeal from a conviction under a byelaw that the structure was not a new building; that the byelaws pointed to a building with a roof capable of affording protection or shelter, and that the word "building" in the byelaw meant some structure containing some feature contemplated by and dealt with in the byelaws (*Slaughter* v. *Sunderland (Mayor, etc. of)* (1891), 60 L. J. M. C. 91; 55 J. P. 519).

B. was summoned for building over an open space in his brewery without giving notice, and without approval, contrary to a byelaw. The so-called "building"

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was a boiler, substituted for a smaller one, partly sunk in the ground with a casing of nine-inch brickwork, four feet high, leaving the top of the boiler uncovered. It was held that this was not a new building within the meaning of the statute and byelaw (*Gery* v. *Black Lion Brewery Co.* (1891), 55 J. P. 711). As to roofing over a space between walls or buildings, see now the P. H. A., 1907, s. 23, *post*.

A conservatory, fifteen feet long and nine feet deep, made of wood and glass, and built against the side of a house, was held not to be a "building" within the usual byelaw relating to the construction of walls of new buildings (*Hibbert* v. *Acton L. B.* (1889), 5 T. L. R. 274). But, in *Brown* v. *Leicester Corporation* (1892), 62 L. J. M. C. 22; 57 J. P. 79, it was held that a photographer's advertisement case, made of wood and glass, nine feet long, three feet wide, and seven feet high, erected in his garden might be a "building" within the Public Health (Buildings in Streets) Act, 1888, s. 3. See notes to that section, *post*.

In *South Shields Corporation* v. *Wilson* (1901), 65 J. P. 294; 84 L. T. 267, a wooden shed intended for use only as a stable was held to be a new building within a byelaw. So, too, in *Richardson* v. *Brown* (1885), 49 J. P. 661, a wooden building, thirty feet by thirteen feet, on wheels, stationed at the corner of a new street, used as a butcher's shop, and having a supply of gas, spouts and a fall-pipe.

And see, generally, as to the word "building," notes to s. 4, *ante*, p. 22.

As to the re-erection or conversion of buildings, see notes to s. 159, *post*, p. 361.

Re-erection or conversion of buildings.

It may sometimes be difficult to say whether a new structure is to be regarded by itself as a "new building," or is to be regarded as merely an addition to an old building. Thus, in *Shiel* v. *Sunderland Corporation*, on p. 361, *post*, an annexe to an hotel built partly on the site of a demolished coach-house was held to be an addition to the old building, and not itself a new building; and see also *R.* v. *Foot's Cray U. D. C.*, *ante*, p. 340, and *Repton School Governors* v. *Repton R. D. C.*, *post*, p. 346. *Cf.* also *Hibbert* v. *Acton L. B.*, *supra*. But as to additions to buildings, see now the P. H. A., 1907, s. 23, *post*.

Additions to buildings.

By s. 111 of the Hastings Improvement Act, 1885, "the making of any addition to an existing building by raising any part thereof . . . shall for all the purposes of this Act and of any other local Act for the time being in force within the borough and of the Public Health Acts and of any byelaw made thereunder respectively be deemed to be the erection of a 'new building' and the word building shall for all such purposes include an erection or building of a permanent character of whatever material constructed." By byelaw 81 under this section, "Every person who shall intend to erect a building or otherwise to execute any work to which any of the byelaws relating to new buildings may apply, shall before beginning to erect such building or to execute such work, deliver or send, or cause to be delivered or sent, to the surveyor of the sanitary authority notice in writing in which shall be specified the date on which such person will begin to erect such building or to execute such work"; and by byelaw 87 a penalty is imposed for offences against the byelaws. The respondent, a builder, had built a house with a conservatory on the first floor, in accordance with plans duly passed by the authority. Subsequently he pulled down the conservatory, and in its place built a bedroom, a portion of one of the external walls of the house being raised for that purpose; the bedroom was of the same height as, and occupied no greater space than, the conservatory for which it was substituted. He sent no notice under byelaw 81 to the surveyor before the erection of the bedroom. Upon a summons charging him with not giving such notice before beginning to erect a building to which the byelaws relating to new buildings applied, the justices held, that as the bedroom when erected did not occupy any greater space than was previously occupied by the conservatory, the respondent had not by the erection of the bedroom made an addition to an existing building within the meaning of s. 111 of the local Act. It was held that the justices were wrong, and that the mere fact that the bedroom occupied no greater space than the erection for which it was substituted, did not necessarily prevent its being an addition to an existing building within the meaning of the section (*Meadows* v. *Taylor* (1890), 24 Q. B. D. 717; 54 J. P. 757).

By the Metropolitan Building Act, 1855, s. 27, r. 4, every warehouse or other building used for the purposes of trade or manufacture containing more than 216,000 cubic feet was required to be divided by party-walls. By s. 8, r. 2, no buildings might be united, if when so united they would be in contravention of the Act. The

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respondent added to a building previously erected a new building, without separating them by party-walls; the addition was made by taking down one of the external walls of the old building, and then erecting the new building against the old one. The addition contained less than 216,000 cubic feet, but the two buildings taken together contained more than that quantity. It was held that the buildings had been united in contravention of the statute, and must be separated by a party-wall (*Scott* v. *Legg* (1876), 2 Ex. D. 39). But this decision was reversed in the Court of Appeal, on the ground that the old building was not subject to the Act, and the new one only to the extent of the addition ((1877), 10 Q. B. D. 236; 41 J. P. 773).

Therefore it would appear that byelaws would by virtue of the proviso in the text have the like limited application. See *Shiel* v. *Sunderland* (*Mayor of*), cited in the notes to s. 159, *post*, p. 361.

"Erection"; "structure."

A coffee van on wheels was held to be an "erection" within the meaning of that word in a byelaw (*Williams* v. *Weston-super-Mare U. D. C.* (1910), 74 J. P. 370; 103 L. T. 9).

A fence may be an "erection" (*Adams* v. *Bromley L. B.*, p. 344, *post*).

The Metropolis Management and Building Act, 1882, s. 13, required a licence to be obtained for the erection of "wooden structures or erections of a movable or temporary character." A steam roundabout, shooting gallery, and caravans were held not to be "structures or erections" within the meaning of this section (*Hall* v. *Smallpiece* (1890), 59 L. J. M. C. 97; 54 J. P. 710).

A similar decision was given in the case of a builder's office constructed of wood and roofed with zinc, placed upon iron wheels to enable it to be wheeled about to any place where building operations were being carried on, and kept, when not required at any such place, in the builder's own yard, and used as a pay-office for his men (*London C. C.* v. *Pearce*, [1892] 2 Q. B. 109; 56 J. P. 790). So, too, in the case of a bungalow constructed of wood and corrugated iron and erected on a piece of land for purpose of exhibition and sale, but not for occupation in the place where it was so erected (*London C. C.* v. *Humphreys*, [1894] 2 Q. B. 755; 58 J. P. 734). See also on the construction of the same section, *London C. C.* v. *Candler* (1891), 60 L. J. M. C. 114; 55 J. P. 679.

Upon the meaning of the term "building or structure" as used in the London Building Act, 1894, see the cases as to projections from buildings, cited in notes to s. 3 of the Public Health (Buildings in Streets) Act, 1888, *post*; *Moran & Son* v. *Marsland*, [1909] 1 K. B. 744; 73 J. P. 114, as to a covered reservoir; and the following decisions as to electric lighting street boxes: *Whitechapel District Board of Works* v. *Crow* (1901), 65 J. P. 549; 84 L. T. 595; *Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe* (1903), 67 J. P. 286; 88 L. T. 772; *County of London Electric Supply Co.* v. *Perkins* (1908), 72 J. P. 133; 98 L. T. 870. See also *Goddard* v. *Greig*, [1917] 2 K. B. 397; 81 J. P. 214, as to distinguishing between the terms "necessary repair" and "alteration or other work," in s. 209 of the London Building Act, 1894.

Temporary buildings.

The appellant, without giving any notice or delivering plans, erected certain structures which from their description could not be intended for residential purposes, and which were found by the justices to have been erected for a temporary purpose only (the storing of tools, etc. during the erection of other buildings), and to have been intended to be pulled down by the appellant when that purpose was answered:—*Held*, that the byelaws as to new buildings did not apply to such a structure, but that if they did they were unreasonable and bad (*Fielding* v. *Rhyl Improvement Commissioners* (1878), 3 C. P. D. 272; 42 J. P. 311).

Structures erected for temporary purposes not having the character of buildings used or intended to be used for purposes of human habitation, are not new buildings. See *Southend-on-Sea Corporation* v. *Archer*; *Same* v. *Romanis* (1901), 70 L. J. K. B. 328; 65 J. P. 292. The structures in these cases were (1) a movable wooden weighing machine house erected on an esplanade at the seaside as a shelter for a weighing machine, which contained also a table and two chairs; and (2) a movable wooden refreshment stall. Both of these were open for the use of the public during the summer months. But the mere fact that structures are not intended for human habitation, does not of itself take them out of the category of new buildings (*South Shields Corporation* v. *Wilson*, *ante*, p. 341). The important point is whether they are of a mere temporary character or not (*Dublin Corporation* v. *Irish Church Missions*,

[1901] 2 I. R. 387; *Dublin Corporation* v. *Allen* (1904), 38 Ir. L. T. 78). On the ground that it was only put up for a temporary purpose, the VICE-CHANCELLOR of the Lancaster Palatine Court held that a portable theatre constructed of wood, and erected for a short period only, where the intention of the proprietor was to remove to another locality within a short time, was not a building within the above section (*Newell* v. *Ormskirk U. D. C.* (1907), 71 J. P. 119). See now as to temporary buildings, the P. H. A., 1907, s. 27, *post*. S. was summoned under that section for erecting a temporary building without having first applied to the local authority for permission. The structure in question, which was known as a "houp-la" and was used for the amusement of persons who paid for the privilege of throwing hoops amongst certain articles or prizes, was octagonal, and had an upright central pole about 13 feet high. From the top of the pole radiated beams supporting a canvas roof. The structure was closed in except on one side by a canvas screen. It was easily taken to pieces for removal. The justices having found that it was not a "building," the court refused to interfere with their decision (*Whitehorn* v. *Smelt* (1910), 74 J. P. 102; 102 L. T. 35). **Note to Section 157.**

A structure may be a new building under the P. H. A., 1875, and at the same time a temporary building under the P. H. A., 1907: see *Andrews* v. *Wirral R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257.

In *Hubbard* v. *Bromley R. D. C.* (1905), 69 J. P. 437, it was held that buildings in course of erection when certain byelaws came into force were not subject to the byelaws as regards work carried out on them after the byelaws came into operation. Buildings in progress when byelaws made.

(*f*) With regard to the prevention of fire, it may be noted that the words "incombustible materials," as used in s. 19 of the Metropolitan Building Act, 1855, have been held to mean wholly incombustible materials and not to include duroline (*Payne* v. *Wright*, [1892] 1 Q. B. 104; 56 J. P. 120). And see *Badley* v. *Cuckfield R. D. C.* (1895), 64 L. J. Q. B. 571; 59 J. P. 582, where it was held that a building consisting of a wooden framework covered with a skin of galvanised iron lined with felt and match-boarding, was not constructed with walls constructed of hard and incombustible materials within the meaning of a byelaw made under this section. *Cf.* ss. 5 (36) and 74 of the London Building Act, 1894, and *Carritt* v. *Godson*, [1899] 2 Q. B. 193; 63 J. P. 644; *Dicksee* v. *Hoskins*, [1901] 2 K. B. 660; 65 J. P. 612. Prevention of fire, stability, purposes of health, etc.

In *Hendon U. D. C.* v. *Martin* (1900), Times, January 13th, it was held that a building roofed with vulcanite covered with one and three-quarter inches of soil and a like thickness of burnt ballast was externally covered with incombustible material within the meaning of a byelaw following the terms of the London Building Act, 1894.

With regard to the meaning of the term "party-wall" when used in byelaws, see the judgment of FRY, J., in *Watson* v. *Gray* (1880), 14 Ch. D. 192; 44 J. P. 537, and the definition given in the London Building Act, 1894, s. 5 (16), considered in *Drury* v. *Army and Navy Auxiliary Co-operative Supply*, [1896] 2 Q. B. 271; 60 J. P. 421; *Irving* v. *Turnbull*, [1900] 2 Q. B. 129; and *London, Gloucestershire and North Hants Dairy Co.* v. *Morley*, [1911] 2 K. B. 256; 75 J. P. 437. As to party-walls "defective" through damp, see *Barry* v. *Minturn*, [1913] A. C. 584; 77 J. P. 437; and as to flues built against party structures, see *Aërated Bread Co.* v. *Shepherd* (1897), 13 T. L. R. 311, and *Miller* v. *Field*, p. 340, *ante*; and as to a party-wall rendered unsafe by removal of adjoining premises, see *Selby* v. *Whitbread & Co.*, [1917] 1 K. B. 736; 81 J. P. 165.

With reference to the meaning of the expression "topmost storey" when used in byelaws, see *Foot* v. *Hodgson* (1890), 25 Q. B. D. 160, where it was held that a "topmost storey" need not necessarily be contained within four vertical walls, and that floors or rooms enclosed on three sides by vertical walls and in front by the sloping roof of the house were *storeys*. And see the definition in the London Building Act, 1894, s. 5 (14).

The respondents were summoned for infringement of a byelaw that "every person who shall erect a new building, and shall construct any room therein so that it may be used for human habitation . . . if such room is not intended to be used as a sleeping room . . . shall construct such room so that it shall be not less in any part thereof than nine feet in height." They had constructed three cottages, each of which contained a scullery only eight feet three inches in height. The sculleries contained a slopstone and stone bench but no fireplace or flue, and they were not of

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sufficient size for taking meals or sleeping. The justices found that the sculleries were not rooms which might be used for human habitation. It was held, that as there was no rule of law that they must find that the sculleries, being without fireplaces, were constructed so that they might be used for human habitation, their decision was right (*Bain* v. *Compstall Co-operative Society, Ltd.* (1911), 75 J. P. 76 ; 103 L. T. 759). As to the height of buildings, see now the P. H. A., 1907, s. 24, *post*.

Persons liable for breach of building byelaws.

As to the person liable to penalties for breach of byelaws as to buildings, see *Brown* v. *Edmonton L. B.*, and cases cited therewith on p. 357, *post*, and *Welsh* v. *West Ham Corporation*, and cases cited therewith on p. 358, *post* ; and *cf. Sunderland Corporation* v. *Brown*, p. 335, *ante*.

Air space and ventilation.

(*g*) As to the ventilation of buildings, see the Towns Improvement Clauses Act, 1847, ss. 110—115. These sections are not, however, incorporated with this Act, and are, therefore, applicable only when there is a local Act in force.

A clause in a town planning scheme which prescribed a building line was held not to be a provision which prescribed the space about buildings within the meaning of s. 157 (3) (*Re Ellis and Ruislip-Northwood U. D. C.*, [1920] 1 K. B. 343).

A byelaw provided that, wherever any open space had been left belonging to any building, it should never afterwards be built upon without the consent of the council, and without having an open space of a specified size and dimensions. It was held that if it applied to old buildings it was invalid (*Tucker* v. *Rees* (1861), 25 J. P. 789 ; 7 Jur. (N.S.) 629).

A local board made a byelaw that every building to be erected and used as a dwelling-house, should have an open space exclusively belonging thereto to the extent at least of 500 square feet, free from any erection thereon above the level of the ground :—*Held*, a valid byelaw, and that justices might find as a fact that a small wooden fence, three feet six inches high, erected round the house, was an "erection" within the meaning of the byelaw (*Adams* v. *Bromley L. B.* (1872), 37 J. P. 662).

The L. Improvement Act enacted that no one should, without the previous consent of the local board, erect dwelling-houses in blocks of eight houses back to back, and that an open space should be left at the end of each block, on the land of the owner, not less than fifteen feet wide, or that such houses should have at their front or back a space of 154 square feet. R. added two back-to-back houses to eight which had been built before the passing of the Act by the owner of the adjacent land :—*Held*, that R. had erected a block of houses within the meaning of the enactment, and that it was immaterial whether the houses were all built by the same owner or some were built before the Act :—*Held*, also, that the enactment as to open spaces was additional to and not in substitution for the first part of the section (*Robshaw* v. *Leeds* (*Mayor of*) (1875), 39 J. P. 149).

In *Reay* v. *Gateshead Corporation* (1886), 50 J. P. 276, 821 ; 55 L. T. 92, the following byelaw was held good : "The yard space shall not be less than one half of the entire area of the house or building and out offices, and no building whatever shall be erected in or over such yard space except the privy, ashpit, and coalhouse in connection with the house or building, and these only in such a position as the board shall approve. The yard space shall be left upon such portion of the ground as the board may order."

A local Act authorised byelaws for sufficiency of space about buildings. One of such byelaws provided that every new building should have at the rear or side thereof an open space of at least 150 square feet, and that wherever any open space had been left when the building was approved, such space should not afterwards be built upon without approval :—*Held*, that the byelaw was invalid so far as it prohibited future buildings in the space in the rear (*Quinby* v. *Liverpool* (*Mayor, etc. of*) (1888), 53 J. P. 213). The ground of this decision appears to have been that under the byelaw as it stood the open space could never have been built upon, whatever its extent might be.

A byelaw provided that every building to be erected, and used as a dwelling-house, should during such use have at the rear or side thereof an open space exclusively belonging thereto to the extent of at least 150 square feet, free from any erection above the level of the ground other than a privy ; but that where there was a water-closet and no other privy, an open space of not less than 100 feet might

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be allowed, and that the distance across such open space between every such building and the opposite property at the rear or side, exclusive of any common passage, should be ten feet at least; if such building were two storeys in height above the level of such open space, the distance across should be fifteen feet; if three storeys, twenty feet; if more than three storeys, twenty-five feet:—*Held*, that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demarcation between such building and the opposite property, and that at no point should a less distance than that prescribed by the byelaw intervene between them, exclusive of any common passage (*Anderton* v. *Rigby* (1863), 13 C. B. (N.S.) 603; *S. C.*, *Anderton* v. *Birkenhead Improvement Commissioners* (1863), 32 L. J. M. C. 137; 9 Jur. (N.S.) 1058).

A byelaw provided that every person erecting a new building to be used as a dwelling-house should provide in the rear thereof an open space exclusively belonging thereto, to the extent of at least 150 square feet, free from any erection thereon above the level of the ground, and should cause the distance across such open space between every such building and the opposite property at the rear to be ten feet at least, and if such building be twenty-five feet in height, should cause such distance across to be at least twenty feet. It was proved that P. had erected a new building to be used as a dwelling-house, twenty-five feet in height; that there was in the rear of the building an open space exclusively belonging thereto to the extent of 700 square feet; that the distance across such open space between such building and the boundary of the opposite property at the rear thereof, including the width of the street which divided the building from the opposite property, was fifty-two feet; that the land exclusively belonging to such building was bounded in the rear by a public street, and that the distance across the open space between the building and the public street was eight feet:—*Held*, that on the true construction of the byelaw, the public street was the "opposite property," and that as P. had not caused the distance across the open space between his building and the opposite property to be at least twenty feet, he had committed a breach of the byelaw (*Jones* v. *Parry* (1887), 52 J. P. 69; 57 L. T. 492).

The respondent was convicted of unlawfully permitting to be used as a dwelling-house a certain building, contrary to the West Hartlepool Improvement Act, 1870. In 1867, one L., wishing to convert his dwelling-house into a lock-up shop and warehouse, applied to the commissioners for permission, which was granted on condition that if again used as a dwelling-house it should be altered so as to leave an open space at the back. The premises were bought by the respondent in 1878, and he knew nothing of the condition. In 1883 it was let for five years, and was latterly used as a restaurant. It was held that the justices were right, as the local Act applied to then existing buildings retrospectively (*West Hartlepool Commissioners* v. *Levy* (1886), 50 J. P. 196).

A brewery company erected outbuildings on land adjoining their hotel, stables and yard, by sufficiently excavating a steep bank sloping down to the high road to enable them to place the buildings on the level of the high road. The back wall of these buildings was built close up against the portion of the bank remaining unexcavated, and the top of the bank was about one foot higher than the level of the back wall of the buildings. The rural district council had refused to approve plans of these buildings, as contravening their byelaws. The company having nevertheless erected the buildings, were convicted of a breach of the byelaws and fined; and on a case stated the High Court affirmed the conviction. In an action for an injunction to restrain the company from continuing to contravene the provisions of the byelaws:—*Held*, that the plaintiff was entitled to the injunction asked for, the construction of the byelaws having been already determined by a court of co-ordinate jurisdiction (*Att.-Gen.* v. *The Friary, Holroyd, and Healy's Breweries, Ltd.* (1907), 71 J. P. 348; 23 T. L. R. 487).

G., without the authority's approval, built a stable on the vacant space beside a dwelling-house, and was summoned for contravening a byelaw providing for purposes of ventilation, that an open space should be left in the rear of every new domestic building. "Domestic building" was defined as "a dwelling-house or an office building or other outbuilding appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building or of the workhouse class." The plans showed that the stable was not intended

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Air space and ventilation—*contd.*

for human habitation:—*Held*, that the byelaw did not apply to the stable (*Collins* v. *Greenwood* (1910), 74 J. P. 327; 103 L. T. 36). See also *R.* v. *Preston R. D. C.*, p. 355, *post*, as to air space where a barn is erected at the back of and adjoining a farmhouse.

In *Repton School Governors* v. *Repton R. D. C.*, [1918] 2 K. B. 133; 82 J. P. 257, the plaintiffs proposed to build an addition to the front of one of their school buildings. The local byelaws provided that "every person who shall erect a new domestic building shall provide in the rear of such building an open space exclusively belonging to such building of an aggregate extent of not less than 150 square feet."

It was admitted that under s. 23 of the P. H. A. (Amendment) Act, 1907, the addition was a new building, and the defendants refused to approve the plans as the above byelaw would be thereby infringed. It was held that the byelaw was unreasonable and therefore bad in that it was impossible to provide an open space at the rear of a new building which consisted of an addition to an existing building.

A building was constructed in three blocks of two storeys each and two blocks of one storey each, all structurally united, and designed for use as stables and coach-houses. There was only one entrance, from which a continuous way ran through all the blocks. The building could easily be adapted for use by more than one person. It was held, in an action to restrain the defendants from building so as to contravene the byelaws in respect of air space, and also in other respects, that the building, although it might be adapted for use by more than one person, was structurally constructed as, and must be treated as being, one building, and that being such, it complied with the byelaws (*Att.-Gen.* v. *Melville* (1905), 70 J. P. 17; 93 L. T. 612).

A decision under the London Building Act, 1894, may also be referred to. The respondent was a builder, and on February 6th, 1902, he served an amended notice upon the district surveyor, that he proposed to erect in a street called West Hill a domestic building, 500 feet in depth, to be used as private residences. In April, 1902, the surveyor served a notice of objection on the ground (*inter alia*) that the respondent proposed to unite the buildings in contravention of s. 77 (1) of the London Building Act, 1894. In October, 1900, the respondent was proposing to erect six separate blocks of eight flats each, named on a plan, A., B., C., D., E. and F. Blocks A. and B. were to front on West Hill, and blocks C. and D. and blocks E. and F. were to have separate entrances from West Hill. Objection was then taken by the surveyor that the erection of blocks C., D., E. and F. would be laying out a street. Various proposals were made by the respondent and objected to by the surveyor. At the time of the notice, in February, 1902, block A. was completed and block B. partly completed. By the notice of February, 1902, it was proposed to erect each of the four other blocks, C., D., E. and F., to contain its own staircase leading from the basement to the top, and to be provided with an entrance leading from the space outside to such staircase. Each pair of adjacent blocks was to be connected by a door leading from the bathrooms of one to the bathrooms of the adjacent block, and there was a passage-way under the roofs from one end of the four blocks to the other end. Each block was capable of being let separately, and none of the blocks were constructed, adapted, or intended to be occupied with any other block. It was held that what the respondent intended to erect was a separate building in itself, and not a union under one roof of separate buildings; and that s. 77 (1) applied only to the union of buildings which had in the first instance been completely erected as separate structures, and did not apply to the union of several buildings in the course of erection for the purpose of transforming them and finishing them as a separate structure (*Goodchild* v. *Matthews* (1903), 67 J. P. 296; 89 L. T. 369).

A byelaw provided that fifteen square feet air space should be left open in the rear of a new building. It was held that where a person built in contravention of this byelaw within the fifteen feet, the local authority might pull down the offending building so long as they did it so as not to cause unnecessary damage (*Jagger* v. *Doncaster R. S. A.* (1890), 54 J. P. 438).

In *Southend* (*Mayor, etc. of*) v. *Ramuz* (1895), Times, August 6th, an action was brought for an injunction to restrain the defendant from permitting premises erected by him to be occupied. It was alleged that he proposed to let certain unoccupied rooms in a shop as separate shops, and that though the building, treated as a whole, had, in the rear, a sufficient air space, yet each room, if treated as a separate shop,

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would not have a sufficient air space. Romer, J., gave judgment for the defendant on the ground that there was nothing in the byelaws to prevent a building with several rooms erected in accordance with deposited plans from being let or occupied in parts.

The Burgh Police (Scotland) Act, 1892, s. 170, enacts that every building erected for the purpose of being used as a dwelling-house shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building, and such space shall be free from any erections thereon other than water-closet, ashpit, coalhouse, or other conveniences, all which conveniences shall, as to height, position, and dimensions, be erected subject to the consent and approval of the commissioners. Where a proprietor proposed to build in a burgh two rows of dwelling-houses parallel to one another, both facing public streets and separated by an open unbuilt-on space belonging to him:—*Held*, that in calculating the open space required by the above section to be attached to the back of each row of houses, the whole area between the tenements was to be taken into account (*Hoy* v. *Magistrates of Portobello* (1896), 23 Ct. of Sess. Cas. (4th ser.) 1039, approved and followed in *Bryce* v. *Lindsay* (1901), 4 F. 241).

See also *McDougall* v. *Whyte*; *Raeside* v. *Whyte* (1896), 33 Sc. L. R. 630, decided on the provisions of the Glasgow Police Act, 1866, and Glasgow Building Regulation Act, 1892, as to free and open space in front of the windows of sleeping apartments in buildings at the corner of two streets.

(*h*) The P. H. A., 1890, s. 11, provides that the expression "ashpit" shall include any ashpit or other receptacle for the deposit of ashes, fœcal matter, or refuse. Ashpits.

(*i*) A toll-house erected under a turnpike Act was held to be within the corresponding provisions of 11 & 12 Vict. c. 63, s. 53 (*Tunstall Turnpike Trustees* v. *Lowndes* (1856), 20 J. P. 374), being thus included within the term "building."

A byelaw that no dwelling-house shall be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the house, was held not to be legal (*Waite* v. *Garston L. B.* (1867), L. R. 3 Q. B. 5; 32 J. P. 228). *Per* Cockburn, C.J.: A proviso at the end of such a byelaw which leaves it in the discretion of the local board to enforce it or not does not render it valid. The provision of "secondary means of access" to premises may now, however, be enforced if the P. H. A., 1890, s. 23 (1), is in force in a district. Drainage, etc. of buildings.

B. was charged with erecting new buildings not in accordance with the deposited plans, in that certain tub-closets were not in the position shown on the plans, having been erected from fifteen to twenty-seven feet distant from the main building instead of two and a-half feet. It was held that the tub-closets were privies, and that the defendant was rightly convicted on a charge of executing works without having previously deposited plans (*Burton* v. *Acton* (1887), 51 J. P. 566). Where a byelaw required that every person intending to erect a building should send in complete plans and sections of every floor, showing the position, form, and dimensions of every part of the intended building, but there was no byelaw against building contrary to deposited plans, and the respondent sent in plans which were approved, but afterwards, without sending in fresh plans, made substantial alterations by diminishing the height of the floors of the building, it was held that he ought to be convicted of a breach of the byelaw requiring the deposit of plans (*James* v. *Masters*, [1893] 1 Q. B. 355; 57 J. P. 167).

An urban authority made the following byelaw: "No new house shall be occupied until the house drainage has been made and completed, nor until such house has been certified by the local board, or their officer authorised to give such certificate, after examination, to be in every respect fit for human habitation in their or his opinion":—*Held*, that the byelaw was reasonable and not inconsistent with any of the provisions of the Act, and, therefore, valid: (*Horsell* v. *Swindon New Town L. B.* (1888), 52 J. P. 597; 58 L. T. 732).

An owner of a new house, who has allowed it to be occupied by a caretaker rent free, cannot be convicted of having "let" it in contravention of a byelaw prohibiting the letting or occupation of a new house before it is certified as fit for habitation (*Gowen* v. *Sedgwick* (1904), 68 J. P. 484).

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The power of a rural authority under the text, as amended and extended by the P. H. A., 1890, s. 23 (2), to make byelaws with respect to (*inter alia*) cesspools in connection with buildings, extends to old buildings in existence before the making of the byelaws, as well as to new buildings. And a byelaw providing that "every person who shall construct a cesspool in connection with a building shall construct such cesspool at a distance of fifty feet at least from a dwelling-house" is not unreasonable merely because in a particular case it is not possible to construct a cesspool at the prescribed distance (*Simmons* v. *Malling R. D. C.*, [1897] 2 Q. B. 433; 61 J. P. 502).

Where a byelaw provided that works for the sewerage of new streets were not to be carried out otherwise than in accordance with a specification of the surveyor, it was held that a specification requiring separate surface water and sewage sewers was obligatory, although express power to require such separate sewers was only conferred by a local Act passed after the byelaws were made (*Airey* v. *Smith*, [1907] 2 K. B. 273; 71 J. P. 285). As to whether such power exists under s. 157, *supra*, see *Matthews* v. *Strachan*, [1901] 2 K. B. 540; 65 J. P. 789: *per* RIDLEY, J. The L. G. B. in some cases allowed byelaws requiring the provision of separate drains for sewage and surface water in new houses erected within 100 feet of sewers, etc., but they expressed the opinion that such byelaws could not properly be made in a district which was not provided with separate sewers for surface water. See hereon the provisions of the P. H. A., 1907, s. 36, *post*.

The owners of industrial dwellings in the metropolis substituted iron pipes for the ordinary tile drain pipes ultimately connecting the water-closets in such buildings with the drains, but the perpendicular soil pipes from the closets were not altered. At the same time several pans and pipes connected therewith which were found to have been broken were replaced. It was contended that in carrying out such alterations the owners were "constructing a water-closet" within the meaning of byelaws 17 and 21, which were confirmed after the erection of the buildings. The first provided that "any person who shall construct any water-closet, the soil pipe of which shall communicate with any sewer, and shall be in connection with any other water-closet," shall cause certain things to be done; and the second provided that "these byelaws shall so far as is practicable apply to any person who shall construct or reconstruct any pipe or drain or other means of communicating with sewers or any trap or apparatus connected therewith so far as he shall effect any such works in any building erected before the confirmation of these byelaws, as if the same were being constructed in a building newly erected." It was held that the owners had not "constructed a water-closet" within the meaning of byelaw 17, and that what was done was not within the purview of byelaw 21 (*Metropolitan Industrial Dwellings Co.* v. *Long* (1903), 68 J. P. 113; 20 T. L. R. 103).

A byelaw (No. 5) made under the P. H. (London) A., 1891, s. 39 (1), provided that "a person who shall newly fit or fix any apparatus in connection with any existing w.c. shall as regards such apparatus and its connection with any soil pipe or drain comply with such of the requirements of the foregoing byelaws as would be applicable to the apparatus so fitted or fixed if the w.c. were being newly constructed." Byelaw 14 provided that "every person who shall intend to construct any w.c. earth-closet or privy or to fit or fix in or in connection with any w.c. earth-closet or privy any apparatus or any trap or soil pipe shall before executing any such works give notice in writing to the clerk of the sanitary authority." A railway company, finding that the pans and traps of two existing water-closets at a station required renewal owing to ordinary wear and tear, removed the same and refitted or fixed two new pans or traps. In carrying out the work they complied with all the requirements of the byelaws as referred to in byelaw 5, but gave no notice as provided by byelaw 14. It was held that byelaw 14 did not apply only to new water-closets, but applied also to the fixing of an apparatus, trap, or soil pipe in connection with any existing water-closet (*L. & S. W. Rail. Co.* v. *Hills*, [1906] 1 K. B. 512; 70 J. P. 212).

For other cases where byelaws in the metropolis relating to drain "traps" have been construed, see *Kingsland* v. *Haben* (1904), 68 J. P. 159; 90 L. T. 449; *Treasure & Co.* v. *Bermondsey Borough Council* (1904), 68 J. P. 206; 2 L. G. R. 488.

A byelaw provided that a soil pipe constructed in connection with an existing building should whenever practicable be outside the building and be constructed

in drawn lead or of heavy cast iron, but that where it was necessary to construct such soil pipe within such building it should be constructed in drawn lead:—*Held*, that the byelaw was applicable to a case where the soil pipe was constructed partly inside and partly outside the building, and did not deal merely with soil pipes which were entirely outside or entirely inside a building (*Marylebone Borough Council* v. *White* (1912), 76 J. P. 382; 10 L. G. R. 767). Note to Section 157.

A byelaw forbidding the construction of any cesspool so that it shall have by drain or otherwise any outlet into or means of communication with any sewer is not violated by connecting together a series of cesspools (*Button* v. *Tottenham U. D. C.* (1898), 62 J. P. 423; 78 L. T. 470).

See also the P. H. A., 1890, s. 23, as to the power to make byelaws as to keeping water-closets supplied with sufficient water for flushing. And see the P. H. A., 1907, ss. 39 *et seq.*, *post*.

(*j*) See as to this subject, ss. 46 and 97, *ante*, pp. 115, 185; the Housing of the Working Classes Acts, 1890 and 1903, and the Housing, Town Planning, etc. Act, 1909, *post*, Vol. II. Buildings unfit for habitation.

(*k*) It was held under the L. G. A., 1858, s. 34, that a local board could not make a byelaw that before beginning to dig or lay the foundation of any new building, a written notice of one month at the least should be left with the clerk at one of the monthly meetings of the board, accompanied with the plans and sections. It was also held that if a person gave notice of intention to build, and left plans and sections, he might at once commence the building, subject to the right of the board to pull down or alter it, if not in conformity with the byelaws (*Hattersley* v. *Burr* (1866), 14 L. T. 565). This case and the previous one of *Young* v. *Edwards*, *post*, p. 352, were discussed in *Hall* v. *Nixon* (1875), L. R. 10 Q. B. 152; 39 J. P. 341. There a byelaw was held good which required every person intending to erect a new building to give fourteen days' notice, and to deliver plans and sections to the surveyor of the board, and provided that any person erecting a new building without delivering such notice and plans, or without having the plans approved by the board, should be liable to a penalty. *Hattersley* v. *Burr* was distinguished on the ground that, under the byelaw in that case, a builder might be delayed two months. The provision for giving notice is not inconsistent with the power to pull down buildings erected in contravention of the byelaws under a byelaw or under the next section, for the beginning to build without notice may subject the builder to a penalty, while the buildings erected in contravention of the byelaws may be pulled down (*per* QUAIN, J., in *Hall* v. *Nixon*, *supra*, and see the next section). Notices before building.

It has been held that penalties for building in contravention of a byelaw without the approval of the authority, cannot be recovered unless the authority have exercised their power of disapproval within the month prescribed by the next section (*Clarke* v. *Bloomfield* (1885), 1 T. L. R. 323; but see the cases collected with this case in note (*d*) under s. 158, *post*, p. 355). With reference to the time within which proceedings under the byelaw must be taken, see the cases cited in the notes to the next section as to continuing offences.

A byelaw providing that every person who should intend to erect a building or to rebuild any existing house should give notice in writing of his intention to the authority and should accompany such notice with a plan, was held good (*Ballymena (Commissioners of)* v. *McKay* (1886), 17 L. R. Ir. 605).

(*l*) A byelaw requiring plans of new buildings showing the position of such buildings and of adjoining buildings, was held good in *Slee* v. *Bradford (Mayor of)*, *ante*, p. 326. Byelaws made under this section may require plans of a similar kind. It has been held that it is reasonable to make byelaws enabling the authority to retain the plans of intended buildings, although such plans be disapproved (*Gooding* v. *Ealing L. B.* (1884), 1 T. L. R. 62). See now the P. H. A., 1907, s. 16, *post*, which refers, however, only to *approved* plans. Deposit of plans.

Section 99 of a local Act provided that every house to be thereafter erected on vacant land, except corner houses, should have a back-yard or other vacant ground or area of not less length than eight feet extending from the main building for the whole length of such building; and s. 101 required a plan to be furnished to the local board by persons intending to build, showing the particulars required by the Act, and provided that the plan should not be carried into execution, nor the

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Deposit of plans—*contd.*

building commenced, until the plan should have been approved. A builder submitted a plan of four new houses having vacant ground at the side, but not at the back. The board disapproved the plan as not complying with s. 99, but he commenced to build notwithstanding. It was held that whether s. 99 required the vacant space to be at the back or not, he was rightly convicted of an offence against s. 101 (*Pearson* v. *Kingston-upon-Hull L. B.* (1865), 35 L. J. M. C. 36; 29 J. P. 711).

A byelaw, made under local Acts, providing that any person erecting a new building before approval of the plans required by the byelaws to be sent to the authority twenty-one days before commencing building should be liable to a penalty, was held valid where it was also provided by the byelaws that the plans so required to be sent in should be approved or disapproved by the authority within the twenty-one days, and by the local Acts a right of appeal to quarter sessions was given to any person aggrieved by any determination of the authority. And it was held that a person might be convicted of an offence against such byelaws if he commenced to build after notice that his plans had been disapproved by the authority within the twenty-one days, although no evidence was offered by the prosecution that the plans did not comply with the requirements of the local Acts and byelaws (*Cook* v. *Hainsworth*, [1896] 2 Q. B. 85; 60 J. P. 439).

When an owner is allowed to deposit a specimen plan and afterwards proceeds to erect houses of the type shown therein, the specimen plan may be regarded as a plan applicable to each house (*Balby-with-Hexthorpe U. D. C.* v. *Millard* (1903), 68 J. P. 81).

A builder who executes work substantially departing from his approved plans may be convicted for executing it without having previously deposited plans (*Burton* v. *Acton, James* v. *Masters, ante*, p. 347). The owner of a building estate had deposited a specimen plan, in accordance with the byelaws, of certain types of houses intended to be erected. He deviated from such plan in regard to one of the houses in four respects, and was summoned; but the justices dismissed the summons on the ground that the deviations were not substantial. Subsequently he was summoned for deviation from the deposited plan in regard to two other houses in the same row, on the ground (as found by the justices) of similar deviations. The summons was dismissed on the ground that the matter was *res judicata*. It was held that the justices were bound to hear the summons on its merits, and that the matter was not *res judicata* (*Balby-with-Hexthorpe U. D. C.* v. *Millard, supra*).

An urban authority had, in 1877, made byelaws for the regulation of new streets and new buildings, and M., an intending builder, submitted plans which were approved. Some of the plans were carried into execution. In 1893 the byelaws were superseded by new ones, and the latter contained a proviso saving the validity of anything duly done or suffered under the old byelaws. In 1896 M. intimated to the authority that he intended to begin building some more houses in accordance with the plans approved under the old byelaws. In an action to restrain him in the County Palatine Court, HALL, V.-C., held that he was entitled to proceed according to the plans approved under the old byelaws. The decision was based upon the ground that the authority were attempting to make retrospective a byelaw which was not intended to be retrospective (*Withington U. D. C.* v. *Moore* (1896), 60 J. P. 408).

In the year 1897, a "street" plan, showing a street to be called Colchester Terrace, was deposited by a landowner, and approved by the authority, and the plan was re-deposited and re-approved in January, 1902. In 1900 a plan for thirty-one houses, part of Colchester Terrace shown in the first plan, was deposited and approved. On April 19th, 1902, notice was given on behalf of the appellant, a builder, of his intention to build twenty houses in Colchester Terrace. On June 6th, 1902, new byelaws with respect to buildings were confirmed, and they imposed fresh conditions as to thickness of walls, etc., but it was therein provided: "From and after the date of the confirmation of these byelaws, the following byelaws and parts of byelaws relating to new streets and buildings, shall be repealed, except as regards any work commenced before the date of the confirmation of this byelaw." On the date of such confirmation, some of the thirty-one houses set out in the plan approved in 1900, had not been commenced; and on August 6th, 1902, the appellant commenced, on some of the vacant sites, work which was in accordance with the

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old, but not with the new, byelaws. It was held that the plan approved in 1900 was not one plan for the whole of the buildings shown thereon, but in effect a number of separate plans for separate buildings; that if the work on any particular building was not commenced before June 6th, 1902, such approval did not authorise its erection in contravention of the new byelaws; and that it was a question of fact whether in any particular case work on a building had been commenced (*White* v. *Mayor of Sunderland* (1903), 88 L. T. 592; 67 J. P. 199).

The P. H. A., 1907, s. 15, *post* (when in force), limits the time within which approved plans may be carried out.

A local Act provided that the deposit with the corporation of any plan of any building should be null and void if the execution of the work specified in such plan was not commenced within a certain period. In 1894 the defendant deposited, and the corporation approved, two plans showing eleven houses and two stables and coachhouses. Some of the buildings shown upon the approved plans were erected within the specified period, and, after the expiration of that period, the defendant commenced to erect other buildings shown upon such plans, without depositing fresh plans. It was held that the plan of every house, or stable and coachhouse, was a separate plan, although they were all included on the two sheets deposited with the plaintiffs; and that, therefore, the deposit was null and void so far as such plans related to the buildings which were not commenced within the period specified in the Act, and that fresh notices and deposits of plans were necessary (*Harrogate Corporation* v. *Dickinson*, [1904] 1 K. B. 468; 68 J. P. 202).

A local Act provided that an undertaking in writing given by an owner of property on the passing of plans should be binding on his successors; but intending purchasers were entitled upon inquiry of the authority to information as to unfulfilled undertakings. It was held that having regard to the terms of the section, a purchaser could not dispute the validity of such an undertaking (to give up land for street widening) on the ground of "remoteness"; and that, his inquiries having been restricted to the existence of paving charges, and having been truthfully answered, the authority were not estopped from enforcing the undertaking (*Crane* v. *Wallasey U. D. C.* (1912), 76 J. P. 326; 107 L. T. 150). Apart from such a provision, a restrictive covenant entered into by an owner with an authority who own no land adjoining, or affected by the covenant, cannot be made to bind his successors (*London C. C.* v. *Allen*, [1914] 3 K. B. 642; 78 J. P. 449, and *cf. Millbourn* v. *Lyons* (1914), 111 L. T. 388).

The deposit and approval of plans does not bind the owner to build or lay out or dedicate the proposed building or street: see *Mackett* v. *Herne Bay Commissioners*, and *Sunderland Corporation* v. *Skinner*, on p. 338, *ante*; *Hall* v. *Bootle Corporation*; *Healey* v. *Batley Corporation*, and *Kirby* v. *Paignton U. D. C.*, on pp. 290, 291, *ante*.

(*m*) See the next section and the provisions as to expenses contained therein.

Power to pull down.

(*n*) This power is not confined to byelaws relating to structure, but may be extended to and incorporated in byelaws as to the giving of notices and the deposit of plans (see s. 158, *post*, p. 353, and *cf. Baker* v. *Portsmouth* (*Mayor of*) (1878), 3 Ex. D. 4, 157; 42 J. P. 278, decided under the earlier Acts). Where a byelaw provides for the pulling down of a new building erected in contravention of the byelaws, the authority may cause a new building so erected to be pulled down, although no plans of it have been deposited, and the authority have consequently not disapproved plans (*Fairbrass* v. *Canterbury Corporation* (1902), 67 J. P. 181; 1 L. G. R. 181), and the right to exercise such power does not cease on the expiration of six months from the completion of the building (*ibid.*).

A byelaw required every person erecting a new building to cause it to be constructed in the manner therein specified. By another byelaw the council were empowered to remove, alter or pull down "work" done in contravention of (*inter alia*) the first-mentioned byelaw. A man did work on an old railway carriage placed in a field, converting it into a dwelling-house, but leaving untouched the main portion of the shell. It was held, that by virtue of s. 159, *post*, p. 361, he had erected a new building; and that as the whole building was erected in breach of the first byelaw, the council were entitled under the second byelaw, to pull down not only the work done in converting the carriage into a dwelling-house, but the

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whole carriage (*Hanrahan* v. *Leigh-on-Sea U. D. C.*, cited with other cases on p. 362, *post*). *Cf. Andrews* v. *Wirral R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257.

A byelaw made by an urban authority provided that every new street should be laid out and formed of such width and at such level as the authority should in each case determine:—*Held*, that *width* in the text and in the byelaw meant width of roadway and not width between houses on each side of the street; and that the authority were not entitled under the above byelaw, or any other of their existing byelaws, to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway (*Robinson* v. *Barton Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276).

When the byelaws are contravened, the remedies contained in them are not the only remedies available. The court can enforce compliance with them by an injunction in an action by the Attorney-General (*Att.-Gen.* v. *Ashbourne Recreation Ground Co.*, [1903] 1 Ch. 101; 67 J. P. 73; *Devonport Corporation* v. *Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; *Att.-Gen.* v. *Dorin*, [1912] 1 Ch. 369; 76 J. P. 181; *Att.-Gen.* v. *Kerr and Ball* (1915), 79 J. P. 51; 12 L. G. R. 1277), and this jurisdiction exists, in the case of a continuing offence, although an offender against the byelaws has been previously convicted and fined (*Att.-Gen.* v. *Wimbledon House Estate Co.*, [1904] 2 Ch. 34; 68 J. P. 341). The cases just referred to establish, however, that such proceedings are not open to the local authority in the absence of the Attorney-General, and the earlier cases where such proceedings were so brought, but in which the right of the plaintiffs to sue alone was not questioned, can, probably, be no longer relied upon. See *e.g.*, *Hendon L. B.* v. *Pounce*, and *Bromley L. B.* v. *Lloyd*, cited at p. 337.

(*o*) These words remove the ambiguity which gave rise to *Brown* v. *Holyhead L. B.* (1862), 32 L. J. Ex. 25; 27 J. P. 184; *Young* v. *Edwards* (1864), 33 L. J. M. C. 227; 11 L. T. 424; *Burgess* v. *Peacock* (1864), 10 L. T. 617; 16 C. B. (N.S.) 624.

(*p*) A workhouse may apparently be such a building. See *Leeds* (*Mayor, etc. of*) v. *Hunslet Union* (1901), Times, August 3rd, and *R.* v. *Maude* (1901), Times, November 9th.

Saving for railway buildings.

(*q*) Railway arches, enclosed and let for use as a stable, were held to be still buildings belonging to a railway company, so as to be exempt from the provisions of the Metropolitan Building Act, 1855, s. 49 (*Re Badger* (1858), 8 El. & Bl. 728; *S. C., sub nom. North Kent Rail. Co.* v. *Badger*, 27 L. J. M. C. 106; 22 J. P. 160. See *Coole* v. *Lovegrove*, [1893] 2 Q. B. 44; 57 J. P. 647).

A wooden structure erected by coal merchants at their own expense with the permission of a railway company in the company's coal yard or depôt, occupied by the coal merchants rent free and without any agreement of tenancy, and used by them for the clerical work connected with the delivery of coal to them by the railway, consignments by rail, and the sale of such coal to customers, was held to be "used for the purposes of or in connection with the traffic of" the railway company within the meaning of the London Building Act, 1894, s. 86, because the use of the office was a matter of convenience to the company in that it contributed to the speedy clearing of trucks from their line (*Elliott* v. *London C. C.*, [1899] 2 Q. B. 277; 63 J. P. 645).

See also the *London and Blackwall Rail. Co.* v. *Limehouse Board of Works* (1856), 26 L. J. Ch. 164; 20 J. P. 789, and the other cases noticed in the notes to the Public Health (Buildings in Streets) Act, 1888, *post*.

But this proviso does not enable a railway company to build cottages for their servants without complying with the byelaws, for such buildings are not "used for the purposes of" the railway within the meaning of the proviso (*M. S. & L. Rail. Co.* v. *Barnsley Union* (*Guardians of*) (1892), 56 J. P. 679; 67 L. T. 119).

The respondents, on land leased to them by a railway company for the purpose, erected a coal order office, consisting of a brick building which went beyond the general line of buildings certified by the superintendent architect of metropolitan buildings. The land had been acquired by the railway company under a private Act of 1862, which provided that nothing in the Act should take away any of the rights or powers of the Metropolitan Board of Works (the predecessors of the appellants). It was held (BRAY, J., dissenting) that the respondents were liable

to a penalty; *per* CHANNELL, J., on the ground that the London Building Act, 1894, s. 31, which provides that nothing in Part III. of the Act shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes, did not protect the respondents, as the private Act did not authorise the erection of buildings on that margin of the land which went beyond the general building line; and *per* SUTTON, J., on the ground that the respondents had failed to show that the railway company were exercising some special power conferred by some special Act (*London C. C.* v. *Coal Co-operative Society, Ltd.* (1907), 72 J. P. 68): but with this case compare *Metropolitan Rail. Co.* v. *London C. C.*, [1913] 2 K. B. 249; 77 J. P. 190 (an accumulator shed).

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158. Where a notice, plan, or description of any work is required by any byelaw made by an urban authority (*a*) to be laid before that authority, the urban authority shall, within one month (*b*) after the same has been delivered or sent to their surveyor or clerk, signify in writing (*c*) their approval or disapproval (*d*) of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed (*e*).

As to commencement of works and removal of works made contrary to byelaws.

Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner (*f*) the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion (*g*).

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence (*h*), but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken.

This section is in force in every urban district, and in the district of every rural authority who have adopted Part III. of the P. H. A., 1890. It is also in force (in combination with powers under s. 157) in many other rural districts or parts of districts in pursuance of Orders of the L. G. B. or M. of H.

When work must be begun.

The L. G. B. stated that they did not consider that an urban council could make a byelaw under the P. H. A., 1875, to the effect that their approval of plans of new streets or buildings shall be inoperative unless the works approved of shall be commenced within a stated period. See now, however, s. 15 of the P. H. A., 1907, *post*, upon this point.

Fee for examining plans.

The L. G. B. expressed the opinion that there is no authority for a byelaw under the P. H. A., 1875, requiring fees for the examination of deposited plans, or for the certificate given by the surveyor on the completion of buildings, etc. and that no such fees can be legally charged under the general law.

(*a*) These words are general, and are not limited to byelaws made under this Act. They appear to apply equally to byelaws made by any previously existing authority. See s. 326, *post*.

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(*b*) This means a calendar month (52 & 53 Vict. c. 63, s. 3). The time cannot be extended by the byelaws (*Clarke* v. *Bloomfield* (1885), 1 T. L. R. 323).

(*c*) As to authentication of notice of approval or disapproval, see s. 266, *post*.

Powers of authority: remedies of builders, if plans disapproved.

(*d*) The disapproval will be of no avail if the builder can show that he has not disobeyed any byelaw, but it will, of course, be perilous to proceed until approval. See *per* WILLS, J., in *R.* v. *Tynemouth R. D. C.*, [1896] 2 Q. B., at p. 230. See also *Cook* v. *Hainsworth*, *ante*, p. 350.

The authority must either approve or disapprove. It has been said that they cannot inquire into the right or title of a person to build on the land to which his plans relate (*Ex parte Crosby* (1877), 41 J. P. 740); but see *Thompson* v. *Failsworth*, p. 330, *ante*. They may at any rate take into consideration matters brought to their notice which show that a plan cannot in fact be carried out (*R.* v. *Tynemouth Corporation*, *post*, p. 355).

Where plans for a new street submitted to a corporation complied in all respects with the provisions of the local Act in force in the borough, it was held that the corporation could not refuse to pass them because they did not approve of the site (*R.* v. *Preston* (*Corporation of*) (1887), 3 T. L. R. 665). So too where, though the plans did not disclose any breach of the byelaws, the authority disapproved on the ground that a house of the nature and character proposed would be unsuitable to the locality and would tend to depreciate the character of the adjoining property, the court granted a *mandamus* directing the authority to approve the plans (*R.* v. *Newcastle-upon-Tyne* (*Mayor, etc. of*) (1889), 53 J. P. 788; 60 L. T. 963). In *R.* v. *Harrogate*, Q. B. D., April 16th, 1890, the court refused a writ of *mandamus* under similar circumstances, holding (on the authority of *R.* v. *Lambourne Valley Rail. Co.* (1888), 22 Q. B. D. 463; 53 J. P. 248), that the proper remedy was by action for a *mandamus*. But *semble*, if the case is a proper one for *mandamus*, a motion for the prerogative writ is now recognised as a correct course of proceeding: see *R.* v. *St. George, Southwark* (*Vestry of*) (1892), 61 L. J. Q. B. 398; 56 J. P. 821, and the more recent cases cited below. In *R.* v. *Llandudno Improvement Commissioners*, Times, January 28th, 1892, upon cause shown against a rule *nisi* for a *mandamus* to the defendants to approve plans of a new theatre to be built by the applicants, the court (LAWRENCE and WRIGHT, JJ.) overruled a preliminary objection that the proper remedy was by action of *mandamus*, though the rule was discharged on another ground.

Where an owner of land in a rural district proposed to lay it out as a building estate and to erect on it blocks of houses arranged in streets, and deposited with the authority plans of the proposed buildings, from which it appeared that each of the houses was to be drained with a separate drain ending in the middle of one of the proposed new streets, it was held that the authority were not entitled to attach to their approval a condition that the owner would undertake to construct, at his own expense, the sewers with which the drains were intended to communicate, and also the necessary main outfall sewer (*R.* v. *Tynemouth R. D. C.*, [1896] 2 Q. B. 451; 60 J. P. 804).

In *Smith* v. *Chorley R. D. C.*, [1897] 1 Q. B. 678; 61 J. P. 340, the Court of Appeal held that where a local authority have in good faith refused to pass building plans on the ground that the erection of the proposed houses would amount to the laying out of a new street of a width insufficient under their byelaws, no action will lie for a *mandamus* to compel them to approve the plans. And in *R.* v. *Chiswick U. D. C.* (1908), 72 J. P. 165; 6 L. G. R. 605, it was held (following *R.* v. *Eastbourne Corporation* (1900), 64 J. P. 724; 83 L. T. 338) that a prerogative writ of *mandamus* will not be granted to compel a local authority to approve plans which they have in good faith refused to approve on the ground that they infringe the statutory provisions as to the building line. A *mandamus* was also refused where a local authority refused to pass plans on the ground that the proposed buildings would obstruct a public highway (*R.* v. *West Hartlepool Corporation* (1901), 18 T. L. R. 1).

In *R.* v. *Bexhill Corporation* (1911), 75 J. P. 385; 9 L. G. R. 641, a builder submitted plans for a cottage close to the sea showing a drain and cesspool for dealing with the sink water; the plans satisfied all the authority's byelaws, but the surveyor advised the authority that the drain and cesspool were at such a level that at

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certain states of the tide they would become filled with percolating sea-water and therefore be useless. The authority disapproved the plans on the ground that no satisfactory system of drainage was proposed. It was held that they were not justified in disapproving on the ground of some general objection outside the merits of the plan itself. Thus in *R.* v. *Mayor, etc. of Cambridge*, [1922] 1 K. B. 250; 86 J. P. 13, it was held that a local authority were not entitled to refuse their approval of plans (which complied in every respect with their byelaws) merely on account of the narrowness of adjoining streets and the congestion of traffic therein. The plans were for the erection of a picture house in a congested part of the town. In *R.* v. *Preston R. D. C.* (1912), 76 J. P. 65; 106 L. T. 37, the owner of a farm submitted plans for the erection of new buildings. It was proposed to erect a barn attached to the kitchen at the back of the house, but there was to be no door between the kitchen and the barn. The byelaws provided that a new "domestic building" must have an open space at the rear. The definition of "domestic building" was as follows: "'Domestic building' means a dwelling-house or an office building, or other out-building appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building, or of the warehouse class." The authority rejected the plans on the ground that they infringed the byelaws, because it was proposed to build the barn immediately in the rear of and adjoining the dwelling-house. It was held that the dwelling-house and barn constituted together one domestic building, and that therefore there was no obligation to have an open space immediately in the rear of the house, and a *mandamus* was granted; and see also *R.* v. *Foot's Cray U. D. C.*, [1916] 1 K. B. 246; 79 J. P. 521, *ante*, p. 340.

A plan for laying out a building estate showed that the greater part of a new street was to be laid out on a certain meadow field. The authority were advised that the field must, under certain covenants, be kept for ever as arable or pasture land, or as lawns, shrubberies or gardens, and for no other purpose whatsoever, and they disapproved the plan on the ground (*inter alia*) that it was not practicable to lay out the street as shown in the plan. It was held that the authority had jurisdiction to refuse approval on the ground that in view of these restrictive covenants the plan could not in fact be carried out (*R.* v. *Tynemouth Corporation*, [1911] 2 K. B. 361; 75 J. P. 420).

A builder, whose plans are disapproved, may, assuming them to in fact comply with the byelaws, either proceed to build, or apply for a *mandamus*, if the ground of refusal or conduct of the authority justifies such a course, as to which see the cases, *supra*. In some cases he may, under a local Act, have an appeal to quarter sessions, see *Cook* v. *Hainsworth*, *ante*, p. 350. An action for damages will not lie against a local authority for maliciously refusing to approve plans; but in a proper case a *mandamus* will be granted to hear and determine the application (*Davis* v. *Bromley Borough Council*, [1908] 1 K. B. 170; 71 J. P. 513).

If an authority have assented to the erection of a building on condition of its being removed within a given time, it would seem that they have no power to enforce the fulfilment of such a condition unless they have taken a bond with sureties conditioned for such removal. See *Parsons* v. *Timewell* (1879), 44 J. P. 296, decided with reference to the Metropolitan Building Act, 1855, ss. 45, 46.

Where an authority has not within the month prescribed by the section signified its disapproval of the plans laid before it, there is authority for the proposition that it cannot afterwards object to the building according to the plan (*Masters* v. *Pontypool L. B.*, *ante*, p. 326). And see *Slee* v. *Bradford (Mayor of)*, *ante*, p. 326; *Clarke* v. *Bloomfield* (1885), 1 T. L. R. 323. According, however, to a later decision, this proposition is open to question, for it was there held that an actual approval of plans affords no answer to a charge of building contrary to the byelaws: see *Yabbicom* v. *King*, *ante*, p. 330. And, notwithstanding any default by the authority, the Attorney-General might in a sufficiently important case intervene to enforce compliance with the byelaws by an action for an injunction. See *Att.-Gen.* v. *Ashbourne Recreation Ground Co.*, *ante*, p. 352, and *Att.-Gen.* v. *Kerr and Ball* (1915), 79 J. P. 51; 12 L. G. R. 1277.

Removal of work.

(*e*) There may be a provision to this effect in the byelaws: see s. 157, *ante*, p. 327; and *cf. Robinson* v. *Barton Eccles L. B.*, on p. 333, *ante*. Notwithstanding the power of

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given by this section, the authority may impose a penalty for breach of any byelaw; see *Hall* v. *Nixon*, *ante*, p. 349, and see *Andrews* v. *Wirral R. D. C.*, *infra*.

As to other remedies for infraction of byelaws, see note (*n*) under s. 157.

Notice must be given to the person erecting the building, and an opportunity afforded him of being heard before the authority can legally demolish the same (*Cooper* v. *Wandsworth District Board of Works* (1863), 32 L. J. C. P. 185; 8 L. T. 278; and see *Masters* v. *Pontypool L. B.*, *ante*, p. 326), and *Andrews* v. *Wirral R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257. These cases were followed and approved in *Hopkins* v. *Smethwick L. B.* (1890), 24 Q. B. D. 712; 54 J. P. 693; and see *Att.-Gen.* v. *Hooper*, [1893] 3 Ch. 483; 57 J. P. 564; see, however, *Cheetham* v. *Manchester* (*Mayor of*) (1875), L. R. 10 C. P. 249; 39 J. P. 343, where, in the case of a dangerous house, notice was not required under the provisions of a local Act, the certificate of the surveyor being conclusive as to the fact of the danger. For a case where it was held that a man had had an "opportunity of being heard" although a letter addressed to him had been returned through the Dead Letter office, see *James* v. *Institute of Chartered Accountants* (1908), 98 L. T. 225; 24 T. L. R. 27.

A byelaw (No. 98) provided that where a person executed any work to which the building byelaws applied he should "receive notice in writing specifying any matters in respect of which . . . the execution of such work may be in contravention of any byelaw relating to . . . buildings" and requiring him to obey the byelaw. F. received a notice, purporting to be given under the byelaw, from the surveyor of the council to the following effect: "I am directed by this council to draw your attention to the fact that a wooden erection has been made in the backyard of your property, situate at No. 20, Avondale Terrace, Chester-le-Street, contrary to byelaws Nos. 53 and 96 of the byelaws relating to new streets and buildings in force in this district, and you are hereby requested," etc. On an information against F. it was proved that he had contravened the byelaw No. 53, which related to the amount of open space required at the rear of any new domestic building, the required distance from the said building to the boundary of adjoining premises, and the required freedom from erection within the limits of this open space, but the justices dismissed the information on the ground that the notice was bad in that it did not, as required by byelaw No. 98, specify the matters in respect of which the erection of the building contravened the provisions of the byelaws referred to in the notice. It was held that the notice was sufficient (*Dickinson* v. *Forsyth* (1904), 68 J. P. 170; 90 L. T. 30). See also *R.* v. *Slater* (1903), 67 J. P. 299, where a notice alleged contravention of byelaws in "laying out" a new street, and a conviction in respect of "laying out *or* constructing," was quashed as being uncertain or disclosing two offences.

When an authority are entitled to pull down a building under the byelaws or this section, they may do so in any way they please so long as it is not dangerous; where an authority had pulled down rather more of a building than they were strictly entitled to do, they were held liable, the damage done not being appreciable (*Jagger* v. *Doncaster R. S. A.* (1890), 54 J. P. 438).

(*f*) See s. 251, *post*. This provision was contained in many byelaws, but it does not appear that such a byelaw was legal. Hence the provisions in the text.

As to the time within which these expenses may be recovered, see the note to s. 252, *post*.

In *R.* v. *Morris* (1883), 31 W. R. 609, it was held that on a *certiorari* to quash an order of justices for payment of expenses under this section costs might be granted, as the proceedings were civil, not criminal. This case was not followed in *R.* v. *Parlby* (1889), 53 J. P. 774, but it has now been decided by the Court of Appeal that the King's Bench Division and Court of Appeal have power to award costs to a successful applicant for a writ of *certiorari* (*R.* v. *Woodhouse*, [1906] 2 K. B. 501; 70 J. P. 485). The decision on the main point in this case was afterwards reversed (*sub nom. Leeds Corporation* v. *Ryder*, [1907] A. C. 420; 71 J. P. 484), but the decision as to the power to award costs on *certiorari* was not discussed.

Person causing work to be executed.

(*g*) B. contracted with W., the owner of land, to erect seventy-six houses thereon, and lodged plans with the authority. After erecting fifty-nine houses, B., with the owner's consent, agreed, on September 1st, with C., that C. should erect the

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rest of the houses at a cetain price and C., in erecting them, made the walls insufficient, and not in compliance with the byelaws. C.'s infringement of the byelaws was after September 1st, when B. had ceased to have anything to do with the buildings :—*Held*, that B. was not "the person erecting the buildings" which C. was building, and was not liable for the infringement of the rules as to thickness of walls (*Brown v. Edmonton L. B.* (1881), 45 J. P. 553). But *quære* whether under such circumstances, if a building were pulled down by virtue of this section, the expenses might not have been recovered from B. as the person causing the works to be executed.

B., the owner of waste ground, put a wooden fence along the boundary without floor or roof. He let the place to R., who sold toys during the season, but he forbade R. to fix anything to the structure. R., without B.'s knowledge, stretched some canvas across the top of the fence, but removed it when he left the premises. Three days after R. left, B. was charged with erecting a wooden building contrary to the byelaws. It was held that the justices were wrong in convicting B., the fact that he was owner not making him responsible for R.'s offence (if any) (*Bennett* v. *Skegness L. B.* (1890), 54 J. P. 469).

The respondent, a plumber, was summoned under London byelaws (1) for not executing certain works of redrainage in the manner prescribed by the byelaws, and (2) for not depositing plans of the alteration as required by the byelaws. He was employed by the owner of a house, a builder, to execute certain sanitary works; and the works executed by him included the works complained of. Before executing the works he did not deposit the plans required by the byelaws, which were expressed to apply to any person who should construct or reconstruct any drain or apparatus connected therewith. It was held, on the facts, that as there was nothing to show that the respondent was not merely carrying out the orders given him by the owner of the house, he could not be convicted (*Kershaw* v. *Brooks*, [1909] 2 K. B. 265; 73 J. P. 231). See also, as to the person liable for an infringement of byelaws, *Sunderland Corporation* v. *Brown*, and *Att.-Gen.* v. *Gibb* (as to laying out streets), on pp. 332, 335, *ante*, and *Welsh* v. *West Ham Corporation* (as to continuing offences), p. 358, *post*, and cases cited therewith.

Continuing offences.

(*h*) These words provide a means of meeting the decision in *Marshall* v. *Smith* (1873), L. R. 8 C. P. 416; 37 J. P. 471. In that case byelaws were made under the P. H. A., 1848, s. 115, and the L. G. A., 1858, s. 34, by one of which (No. 12) all party-walls, except in houses of one storey, were required, under a penalty of 40*s.*, to be nine inches at least in thickness, whilst another (No. 42) provided that "in case any offence under any of the foregoing byelaws shall continue, the person offending shall be liable to a further penalty of not exceeding 40*s.* for each day during which such offence may continue after written notice of the offence has been given by the local board to the offender." The appellant having been fined for an offence against byelaw No. 12, in building a party-wall four and a-half inches thick, was afterwards convicted upon an information charging him, under byelaw No. 42, with continuing the offence. It was held that suffering the party-wall to remain unaltered was not a continuing offence within byelaw No. 42, or, if it was, that the byelaw was unreasonable, the appropriate remedy being the removal of the structure by the board, as authorised by the L. G. A., 1858, s. 34. The court pointed out that while continuing to build might be a continuing offence, the failure to destroy after the building was completed could not.

Byelaws were made for the borough of S. under the L. G. A., 1858, s. 34. That Act was repealed by the present Act, but by s. 326 (*post*) all byelaws duly made under any of the repealed Sanitary Acts, and not inconsistent with any of the provisions of this Act, are to be deemed byelaws under this Act. The 27th byelaw provided that every person intending to erect any new building should give one month's notice of such intention, and send a plan to the surveyor. The 31st byelaw provided that if the owner or person intending to construct any new building failed to give the required notices, or constructed or caused to be constructed, any building contrary to any provision of the byelaws, he should be liable for each offence to a penalty not exceeding £5, and should pay a further sum not exceeding 40*s.* for each day such buildings should continue or remain contrary to the said provision. The appellant contended that he was not bound to give notice, or send a plan of alterations which he proposed to make in his house, as the alterations merely consisted in raising the old walls a storey higher; but he sent a plan, as he said, out of courtesy. This

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plan was disapproved, and notice of disapproval was sent to the appellant, but he went on with the buildings. He was then summoned by the surveyor for neglecting to give notice and send plans according to the byelaws. The magistrate found that the structure was a comfortable, good-looking dwelling-house, which before the work it was not. He also found, as a fact, that the old building was partly pulled down to the ground floor, and that the buildings erected on the site thereof formed a new building intended for occupation, and that they were a new building within s. 159, *post*, p. 361. The appellant was convicted and fined 40*s.* and costs, and a further sum of 20*s.* for each day the work should continue or remain contrary to the provisions of the byelaws. It was held, affirming the conviction, that the question whether the alterations constituted a new building was one of fact for the magistrate; that he had decided as a fact that they did constitute a new building; and that the penalty of £5 was payable in addition to the penalty of 40*s.* a day, though the information laid against the appellant was only for not having given the notice and plans under the 27th byelaw (*James* v. *Wyvill* (1884), 48 J. P. 725; 51 L. T. 237).

A builder who, between March and October in one year, had commenced and completed buildings without obtaining such approval of the plans as was required by byelaws framed under the Acts of 1848 and 1858, received in October notice to pull down such buildings; and upon non-compliance was, in December, summoned, and upon conviction fined £5, and, in addition, 5*s.* for every day from the date of the above notice down to the day of the summons, under the following byelaw: "That if any person shall build, without the approval of the local board, or do anything contrary to the provisions of the byelaws, he shall be liable for such offence to a penalty not exceeding £5, and shall pay a further sum, not exceeding 40*s.*, for every day during which such works shall continue to remain contrary to these provisions, and the board may cause the work to be pulled down." The court quashed the conviction: *per* DENMAN, J., the imposition by a byelaw of continuing penalties was not justified by the earlier Acts under which this byelaw was framed; and being, therefore, *ultra vires* it was not validated by s. 326, *post*; *per* HAWKINS, J., a good byelaw imposing continuing penalties might have been made, but this particular byelaw was bad, because it imposed a penalty of 40*s.* "for every day that *the work* shall continue," instead of "for every day that *the offence* shall continue," as authorised by s. 115 of the Act of 1848 and confirmed by s. 326, *post*; the *offence* only dating from the notice given by the board to discontinue the work. As to the conviction for the original offence it was held that the summons was out of time because there was no evidence that the acts complained of took place within the six months prior to December. *Per* HAWKINS, J., a byelaw in part good and in part bad is severable (*Reay* v. *Gateshead* (*Mayor, etc. of*) (1886), 50 J. P. 805; 55 L. T. 92).

An information was laid against a builder for carrying out work in a new street contrary to building byelaws and s. 158. The magistrate inflicted a penalty of £5, and a further penalty of £2 a day for each day that the offence continued. It was held, affirming the conviction, (1) that the construction of the works and their maintenance were not separate offences under the section, when, in fact, done by one person, and that they might, therefore, be included in the same information and summons; (2) that the appellant having received notice prior to the date of the information that he was offending against the byelaws, and that he was liable to an additional daily penalty during the continuance of the offence, he had sufficient notice that he was being proceeded against for the additional penalty (*Airey* v. *Smith*, [1907] 2 K. B. 273; 71 J. P. 285).

A byelaw as to the ventilation of buildings imposed a penalty on any person erecting a building in contravention of its provisions, and a further penalty for every day during which the offence continued after notice by the authority. A builder having been convicted of erecting a building in contravention of the byelaw, notice was duly given him by the authority. The builder had never been owner of the building; and since the conviction he had not been in possession of it, nor entitled to enter upon it. The building having been suffered to remain unaltered after the notice, it was held that the builder was not liable for the continuing offence under this section (*Welsh* v. *West Ham Corporation*, [1900] 1 Q. B. 324; and see *Att.-Gen.* v. *Gibb*, [1909] 2 Ch. 265; 73 J. P. 343). The respondent purchased a house from a builder who had in building it committed an offence

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against the Public Health (Buildings in Streets) Act, 1888, s. 3. It was held that the respondent had not committed an offence against the section by maintaining the house after notice from the authority in the same state as it was in at the time he bought it (*Blackpool Corporation* v. *Johnson*, [1902] 1 K. B. 646). The section under which the last-mentioned case was decided is, however, differently worded to s. 158. *Cf. Hull* v. *London C. C.*, [1901] 1 Q. B. 580; 65 J. P. 309.

In *Reay* v. *Mayor, etc. of Gateshead, ante*, p. 358, HAWKINS, J., said: "This s. 158 really seems to have been pointed to the making that a continuing offence by law which the two learned judges who decided *Marshall* v. *Smith* held not to be a continuing offence. It reversed their judgment as to the existing state of the law, so that if *this section had been passed before the decision in Marshall* v. *Smith*, there would have been no doubt at all that the penalties there would have been properly imposed. At all events, since 1875 the offence is a continuing offence, and the continuing penalties may now be inflicted." But CHANNELL, J., in *Welsh* v. *West Ham Corporation, supra*, pointed out that the observations of HAWKINS, J., were not strictly accurate; for in *Marshall* v. *Smith* the defendant had sold the premises long before he was summoned, and the court, whilst holding no "continuing offence" to have been committed, did not decide that he would have been the person liable, if such an offence had been committed. And CHANNELL, J., said: "I think the section (s. 158) means that the person liable for the continuing offence must be the person who actually continued it. The local authority must find out the owner of the premises, and . . . they are assisted to this by s. 306 of the Act."

A brother and sister were convicted of permitting a new building, erected in contravention of a byelaw, to continue to exist in such state as to be in contravention of the byelaw. The only evidence given was that the brother had been convicted of originally erecting the building contrary to the byelaw, that it was still in the same condition, and that both appellants resided in the house to which the building was attached:—*Held*, that the conviction for the original offence was not evidence of the continuing offence (*Pomeroy* v. *Malvern U. D. C.* (1903), 67 J. P. 375; 89 L. T. 555).

In *Reay* v. *Mayor, etc. of Gateshead, ante*, p. 358, HAWKINS, J., also said: "But there is another short sentence in this section, which rather refers to the Statute of Limitations: 'But a penalty, . . . broken.' The limitation of time within which the penalty is to be sued for does not seem to me to affect the procedure at all. It simply provides that in the case of a continuing offence, no penalty shall be incurred for a greater period than twelve calendar months; but it does not limit the time of proceeding to twelve calendar months, or extend the six months given by Jervis's Act, under s. 11. It merely provides a limitation to the extent of the amount of the penalty which may be incurred."

A conviction for a continuing offence which imposes a fine in respect of every day during a period exceeding six calendar months is bad (*R.* v. *Slade*, [1895] 2 Q. B. 247; 59 J. P. 471).

It appears from the judgment in *Reay* v. *Mayor, etc. of Gateshead, ante*, p. 358, that it may, in many cases, be important to decide whether the period of the six months' limitation is to be reckoned from the commencement of a work or from its completion, and that in cases under byelaws made before 1875 the continuing existence of a work done in contravention of the byelaws is not, in general, a continuing offence. The expression "continuing offence" seems to have been first used by COCKBURN, L.C.J., in *Mayer* v. *Harding* (1867), 32 J. P. 421; 17 L. T. 140. See notes to s. 252, *post*. "Continuing nuisance" was also used by MELLOR, J., in *Higgins* v. *Northwich Union* (1870), 34 J. P. 806; 22 L. T. 752. It may be useful to append here some of the more recent cases subsequent to *Marshall* v. *Smith, supra*, as to what amounts to a continuing offence. Where, under a local Act, it was provided that if buildings should be erected contrary to the requirements of the corporation, the corporation might make complaint thereof to a justice, who was thereupon empowered to make an order directing the demolition of the building, it was held that, pursuant to the S. J. A., 1848, s. 11, the complaint must be made within six months after the completion of the building erected contrary to the provisions of the Act (*Morant* v. *Taylor* (1876), 1 Ex. D. 188; 40 J. P. 501). Under 27 & 28 Vict. c. 101, s. 51, which enacts that if any person shall encroach by making, or causing to be made, any building or fence on the side of any carriageway within fifteen feet from the centre thereof, he shall be subject to a penalty not exceeding

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40*s.*; the encroachment is not a continuing offence, and the six months' limitation commences from the completion of such building or fence (*Coggins* v. *Bennett* (1877), 2 C. P. D. 568). The 3 Geo. 4, c. 126, s. 118, enacts that any person causing an encroachment within a certain distance of the centre of a highway shall be subject to a penalty (see as to the meaning of this provision, *Copestake* v. *West Sussex C. C.*, [1911] 2 Ch. 331; 75 J. P. 465). By 9 Geo. 4, c. 77, s. 18, no person may be convicted of an offence against s. 118, after the expiration of six months from the time when such offence shall have been committed. It was held that the period of six months began to run from the time when a substantial encroachment on the highway had been caused, and not from the final completion of the encroaching building or other encroachment (*Hyde* v. *Entwistle* (1884), 48 J. P. 820; 52 L. T. 760). *Rumball* v. *Schmidt* (1882), 8 Q. B. D. 603; 46 J. P. 567, was decided with reference to s. 156, now repealed, and is cited in the notes to the substituted enactment, 51 & 52 Vict. c. 52, *post*. *R.* v. *Catholic Fire and Life Assurance Co.* (1883), 48 L. T. 675, was a decision to the same effect on very similar words in ss. 26 and 27 of the Companies Act, 1862. Where an offence is in the nature of continued disobedience to, or default in conforming with, requirements that contemplate the execution of works necessarily taking some time to execute, the time of limitation cannot be said to run from the date of the requirement itself (*Chepstow Electric Light Co., Ltd.* v. *Chepstow Gas Co., Ltd.*, [1905] 1 K. B. 198; 69 J. P. 72). It is doubtful whether the time of limitation can be said to begin to run when a person is continuing to disobey an order which is always operative until it is obeyed (*ibid.*). Where a temporary structure was erected without the licence of the Metropolitan Board of Works, but no complaint of such erection was made until after the expiration of six months from its completion, it was held that the offence was a continuous one, and that proceedings for the recovery of penalties might be taken within six months of the time when it continued to exist (*Metropolitan Board of Works* v. *Anthony* (1884), 54 L. J. M. C. 39; 49 J. P. 229). It is to be observed that this case was decided upon the 45 Vict. c. 14, s. 13, which not only imposes a penalty for the offence but also imposes a penalty "for every day on which such structure, etc. continues erected." L. was summoned by the Metropolitan Board of Works for laying out a new street of less than the width required by 25 & 26 Vict. c. 102, s. 98. L. gave notice of his intended building in May, 1883, to the district surveyor, and paid his fees, but the surveyor did not give notice to the board till November, 1883. The complaint was made in March, 1884. It was held that the notice to the district surveyor was the date of the discovery by the board, and that the complaint was too late, being more than six months after such discovery (*Metropolitan Board of Works* v. *Lathey* (1884), 49 J. P. 245). G., the builder of a new house in the metropolis, on April 1st, sent notice to B., the district surveyor, with plans. On August 4th, B. served forty-eight hours' notice on G. to amend the work and leave sufficient air space pursuant to 45 Vict. c. 14, s. 14. The house was then covered in, and nothing was done under the notice. On February 1st following, information was laid by B. It was held that the offence was the refusal to do the work ordered on August 4th, and that the information was within the six months (*Bovill* v. *Gibbs* (1887), 51 J. P. 485. And see *London C. C.* v. *Worley*, [1894] 2 Q. B. 826). An appellant was convicted on an information charging him with unlawfully extending a projection beyond the general line of buildings in a street without the permission of the London County Council contrary to the London Building Act, 1894, s. 73 (8), the projection complained of being a wooden case attached to the external wall of a building by iron brackets, and used as an advertising sign. It had been put up more than six months before the information was laid. It was held that the conviction was wrong because, first, the sign was not a projection within the meaning of the Act and, secondly, the prosecution was barred by s. 11 of the S. J. A., 1848 (*Hull* v. *London C. C.*, [1901] 1 K. B. 580; 65 J. P. 309). In *Hole* v. *Chard Union*, [1894] 1 Ch. 293, it was held that continued pollution of a stream running through the plaintiff's land by permitting sewage to fall into it, was a continuing cause of action within R. S. C., Order XXXVI., r. 58. Reference may also be made to the cases of *Heard* v. *Heard*, [1896] P. 188; 60 J. P. 426, and *Ellis* v. *Ellis*, [1896] P. 251; 60 J. P. 823, decided under the Summary Jurisdiction (Married Women) Act, 1895; and *Verney* v. *Fletcher*, [1909] 1 K. B. 444; 73 J. P. 131, decided under the Factory Act, 1901.

159. For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building. **Section 159.** What to be deemed a new building.

See notes on p. 340 *et seq.*, *ante*. This section does not exhaust the definition of a "new" building. It only describes what shall be considered to be a new building in particular cases. Although it provides for the conversion of a "house" (see the definition in s. 4, *ante*, p. 20) into a dwelling-house, it makes no provision for the conversion of a dwelling-house into a house for other purposes, such as a factory or hall for concerts and entertainments. Such a conversion would not, apparently, amount to the erection of a new building, within the meaning of the byelaws, under this Act. But see the P. H. A., 1890, s. 23 (4), *infra*, and *Morgan* v. *Kenyon*, p. 363, *post*; and as to the reconversion of a converted building, see *West Hartlepool Commissioners* v. *Levy*, on p. 345, *ante*; *Hall* v. *Eastbourne Corporation*, and other cases cited therewith on p. 362, *post*, and the P. H. A., 1907, s. 23, *post*; and see *Davison* v. *Birmingham Industrial Co-op. Society* (1920), 90 L. J. K. B. 206; 85 J. P. 73, as to the meaning of the word "adapted" in s. 6 of the Housing (Additional Powers) Act, 1919. Alteration or conversion of buildings.

The P. H. A., 1890, s. 23 (4), provides that every local authority may make byelaws to prevent buildings which have been erected in accordance with byelaws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the byelaws.

And s. 33 of the same Act provides that: "(1) Where the plan of a building has been, either before or after the adoption of this part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or byelaw, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings. (2) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or byelaw for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house."

These sections of the Act of 1890 (for notes to which see the Act, *post*) are adoptive only; but, where they are in force, they meet some of the cases for which the text does not provide.

See also for a further extension of the definition of "new buildings," the P. H. A., 1907, ss. 23, 33, *post*.

The Act contains no definition of a dwelling-house. Reference may be made to the cases decided upon the term as used in the Parliamentary Registration Acts. See, for example, *Lawson* v. *Fraser*, *ante*, p. 22; *Thompson* v. *Ward* (1871), L. R. 6 C. P. 327; *Boon* v. *Howard* (1874), L. R. 9 C. P. 277.

The owner of an old house used as an hotel which had a coach-house and stable attached to it in its back yard, pulled these down and re-erected them as a three-storied annexe to the hotel, partly on the same site and partly on a piece of the yard. The arrangement of passages and staircases made the annexe practically part of the old house. It was held, under the corresponding provisions of 21 & 22 Vict. c. 98, s. 34, to be an addition thereto, and not in itself a re-erected and therefore "new" building (*Shiel* v. *Sunderland Corporation* (1861), 6 H. & N. 796). But where a stable in a yard at the rear of premises was pulled down and re-erected of smaller superficial dimensions, but somewhat higher, in another part of the same "New building" or not a question of fact.

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yard, the old materials, with some addition, and the boundary walls of the yard, being made use of in such re-erection, it was held to be a "new building" within the same provisions (*Hobbs* v. *Dance* (1873), L. R. 9 C. P. 30; 38 J. P. 56).

See also *James* v. *Wyvill*, cited on p. 358, *ante*. In that case, Lord COLERIDGE, C.J., said: "The question whether a building is a new building or not has been decided over and over again to be a question of fact; it is a question of degree. For instance, if a building were nearly all taken away and then rebuilt, it clearly would be a new building; on the other hand, it is quite clear that by a small addition of, say, a door, the building would not thereby become a new building. Between these two extreme cases there may be thousands of cases, and it would be impossible to give a definition in each particular case as to what is or is not a new building, and it must be left to the discretion of each judge to decide for himself what is a new building." So, too, in *Redruth Brewery Co.* v. *Redruth R. D. C.* (1905), 69 J. P. 78; 3 L. G. R. 130, it was held that the question whether the re-erection of an old building amounts to the erection of a new building is one of fact, and that s. 159, *supra*, is not an exhaustive enumeration of all the instances where the re-erection of an old building should be considered the erection of a new building. A wooden shed had its roof removed and reconstructed; certain brick piers were raised, wooden props were replaced by iron pillars, a new end wall was erected, and two wooden walls were replaced by iron. The only portions of the old building left were the wooden principals of the roof, portions of the brick piers and a wall. The court held that it must be regarded as a new building (*Lee* v. *Barton* (1909), 73 J. P. 509; 101 L. T. 600). The appellant for three years occupied two vans as a dwelling-house; he then removed them, and having built a low wall took the vans back again and placed them partly on the wall and partly on blocks of wood. He then built a chimney stack into the side of one of the vans and occupied them as a dwelling-house. He was summoned under bye-laws for failing to give notice of his intention to erect a new building, and for occupying a new dwelling-house before it had been certified as fit for human habitation. The justices convicted; and it was held that there was evidence that he had erected a new building, and that the vans constituted a new dwelling-house, and that, therefore, the convictions must be affirmed (*James* v. *Tudor* (1913), 77 J. P. 130).

A man, who bought a field with an old railway carriage in it, converted such carriage into a dwelling-house by altering its internal arrangement, but left untouched the main portion of its shell. It was held that by virtue of s. 159 he had erected a "new building," and that as that building was erected in breach of a bye-law, the council were entitled under another byelaw, to pull down not only the work done in converting the carriage into a dwelling-house, but the whole structure (*Hanrahan* v. *Leigh-on-Sea U. D. C.*, [1909] 2 K. B. 257; 73 J. P. 308). See also *Andrews* v. *Wirrall R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257; and *cf. Att.-Gen.* v. *Kerr and Ball* (1915), 79 J. P. 51; 12 L. G. R. 1277.

Where a portion of an old building is taken down for the purpose of re-erection, only that portion is a new building within the meaning of s. 23 of P. H. A., 1907. See *R.* v. *Foot's Cray U. D. C.*, [1916] 1 K. B. 246; 79 J. P. 521, *ante*, p. 340.

A local Act provided that the conversion of one dwelling-house into two or more, and the reconversion into a dwelling-house of a building discontinued as a dwelling-house, should be deemed to be the erection of a new building. A block of three shops with dwelling-rooms over each was converted into one shop in 1892; the upper part of the whole block was occupied as one dwelling from 1900 to 1903; in 1903 the shop was again divided into three shops, and the upper part correspondingly divided into three dwellings. It was held that the alteration of the upper part into three dwellings was the erection of a new building within the meaning of the Act (*Hall* v. *Eastbourne Corporation* (1905), 69 J. P. 369); and see also *Cammell, Laird & Co.* v. *Brownridge* (1919), 83 J. P. 190; 17 L. G. R. 441; and *cf. Alexander* v. *Tracy* (1915), 79 J. P. 458; 14 L. G. R. 65.

In *Harding* v. *Larne U. D. C.* (1911), 45 Ir. L. T. 182, it was held that the conversion without any structural alteration of a harness room into a living room, was the "conversion into a dwelling-house" of a building not originally constructed for human habitation, that therefore a penalty was incurred by not depositing plans, and that to continue to use it as a living room after conviction was a continuing offence.

By a local Act "the conversion of a dwelling-house into any other building not

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intended for human habitation shall . . . be deemed to be the erecting of a new building." Premises occupied as two separate dwelling-houses were compulsorily closed by order of the corporation as being unfit for human habitation, and they were then let to the respondents who, without making any structural alterations, occupied them as two warehouses for two and a-half years. Then the respondents, without giving any notices, made interior alterations so as to convert the two warehouses into one. On the hearing of an information against them for infringing a byelaw by beginning to erect a new building without giving notice, it was agreed that if the premises were warehouses at the time of conversion no notice was required, but that if they were dwelling-houses at that date notice should have been given. The court by a majority held that the work was in the conversion of a building of the dwelling-house class into a building of the warehouse class, and that therefore the respondents had committed the offence charged (*Morgan* v. *Kenyon* (1914), 78 J. P. 66).

Incorporation of certain provisions of 10 & 11 Vict. c. 34.

160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters, that is to say,

(1) With respect to naming the streets and numbering the houses; and

(2) With respect to improving the line of the streets and removing obstructions; and

(3) With respect to ruinous or dangerous buildings; and

(4) With respect to precautions during the construction and repair of the sewers streets and houses,

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act (*a*).

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners (*b*) instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act (*c*).

This section is applied by the Act to urban districts only, but the several powers may be applied to rural districts by order of the M. of H. under s. 276. An application for such an order should set out the precise powers desired, the names of the rural parishes in which such powers are considered to be necessary, and (shortly) the grounds upon which the application is made.

Forms for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XI., at pp. 89—101.

(*a*) No. (1) includes ss. 64, 65; No. (2), ss. 66—74; No. (3), ss. 75—78; No. (4), ss. 79—83. All these sections are set out in App. I., *post*, Vol. II. As to the effect of such an incorporation of a statute, see the cases cited in note (*b*) to s. 57, *ante*, p. 132.

With regard to some of these subjects, special provisions will be found in the Act (compare, *e.g.*, s. 154 with s. 67 of the Act of 1847), and it will be important to ascertain whether these provisions in any respect conflict with those in the incorporated Act. Where that may be the case, the present statute should afford the rule to guide, as containing the latest legislation on the particular subject. See as to s. 64 of the Act of 1847, the P. H. A., 1907, s. 21, *post*; as to s. 80, the

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P. H. A., 1890, s. 34, *post*, and the P. H. A., 1907, s. 32, *post*; as to s. 81, the P. H. A., 1907, s. 29, *post*; and as to the fencing of dangerous places in streets, see the P. H. A., 1907, ss. 30, 31, *post*.

(*b*) See the definition in s. 4, *ante*, p. 8. And as to the authentication and service of notices, see ss. 266, 267, *post*.

(*c*) See s. 213, *post*, p. 493. As to the effect of special covenants and agreements between lessor and lessee, see s. 226, *post*, p. 506, but that section does not apply to the case mentioned in the text.

Lighting Streets, etc.

Powers of urban authority for lighting their district. 12 & 13 Vict. c. 94, s. 8.

161. Any urban authority may contract (*a*) with any person (*b*) for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district (*c*), and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same (*d*).

Where there is not any company or person (*b*) (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament (*e*), to supply gas for public and private purposes, supplying gas (*f*) within any part of the district of such authority, such authority may (*g*) themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order (*h*) authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870 (*i*), and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

Rural districts.

This section applies to urban authorities only, but the M. of H. and their predecessors the L. G. B. have issued many orders under s. 276 empowering rural authorities to undertake (by contracting for) the lighting of streets and public places in rural parishes (not of course private houses). An application for such an order should be by resolution of the council, of which a copy should be forwarded to the Board with a short statement of the grounds upon which the application is made, and explaining the arrangements which are proposed for lighting the particular parish or parishes referred to. The lighting need not necessarily be by gas, but if electric lighting is proposed the council should consult the Electricity Commissioners, as an order may be procurable under the Electricity (Supply) Act, 1919, which will dispense with any Order of the M. of H.

As under the Lighting and Watching Act, 1833, action may also be taken parochially for the lighting of rural parishes, the clerk should state in connection with any application for urban powers whether that Act has been adopted in the area in which the rural council propose to act. In this case the application must extend to s. 163, and it must be explained why it is proposed to supersede the existing lighting authority (Parish Council or Inspectors), and what is their attitude towards the proposal. See below as to the provision made in such orders for expenses.

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Orders of the M. of H. authorising the lighting of rural parishes by the district council confer only the powers of the first paragraph of s. 161, relating to contracts for the supply of gas or other illuminant for lighting streets, etc. The Ministry and the L. G. B. held that there were practical difficulties which precluded rural councils from carrying on a gas undertaking even if they were invested with power to establish or purchase one. The difficulty arose not in conferring powers under ss. 161 and 162, but from the fact that, in addition to such powers, an urban authority, in ordinary cases, required the powers of a Provisional Order under the Gas and Waterworks Facilities Acts, and in the case of a rural council there was no express statutory authority enabling them to apply for such an order. It may be noted here that by Order in Council of December 9th, 1920, the powers and duties of the M. of H. in relation to gas undertakings have been transferred to the Board of Trade. See also the provisions of the Gas Regulation Act, 1920, which, however, continue the disability. See the Electricity (Supply) Act, 1919, in the Appendix, *post*, Vol. II.

(*a*) See s. 174, *post*, p. 397, as to the regulations regarding the contracts. As to the meaning in a contract of the words "actual cost of generating the light," see *Buluwayo Municipality* v. *Buluwayo Waterworks Co., Ltd.*, [1908] A. C. 241.

During the recent war because of the restrictions requiring reduced lighting of streets in compliance with orders under the Defence of the Realm Act, full performance of lighting contracts was rendered impossible. The legal position under such contracts was considered by the courts in the following cases: *Leiston Gas Co.* v. *Leiston-cum-Sizewell U. D. C.*, [1916] 2 K. B. 428; 80 J. P. 385; *Wycombe Borough Electric Light and Power Co.* v. *Chipping Wycombe Corporation* (1917), 15 L. G. R. 658; 33 T. L. R. 489.

(*b*) See the definition in s. 4, *ante*, p. 6.

(*c*) It must be noticed that this power is limited to the district of the authority. A contract extending to any place outside the district would be *ultra vires*.

By the Metropolis Gas Act, 1860, s. 6, a certain district was assigned to each metropolitan gas company, and it was provided that no other company or person should "supply gas for sale within the said limits." By s. 14, the supply of gas to owners or occupiers of premises within or partly within the company's district requiring such supply was made compulsory. A railway company had a station which was partly within the district of the appellants and partly within that of the respondents. The respondents, on being required to do so by the company, provided a meter at a point within their own district, from which they supplied gas which was used for lighting the whole station, including the part which was in the appellants' district, to which it was conducted through pipes laid on the premises of the company. It was held that this was an infringement of s. 6 (*Gas Light and Coke Co.* v. *South Metropolitan Gas Co.* (1890), 54 J. P. 373; 62 L. T. 126). See also *Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453, as to the point at which "a supply is given."

It was held in *Fareham L. B.* v. *Smith* (1891), 90 L. T. Jo. 467; 7 T. L. R. 443, that an urban authority might authorise their contractor to put up posts and wires in streets vested in them, for the purpose of lighting such streets by electricity, and might restrain by injunction the owners of adjoining land who claimed the subsoil of the street from cutting or otherwise interfering with the electric wires and poles.

The streets lighted need not necessarily be highways repairable by the inhabitants at large. See note to s. 150, *ante*, p. 296.

Expenses in case of a rural council.

The L. G. B., by an order under s. 276, *post*, declared that the provisions of the first paragraph of s. 161 should be in force within certain portions of a rural sanitary authority, and invested the rural sanitary authority with all the powers, rights, capacities, etc. of an urban sanitary authority "under those provisions" within such portions of the district. The rural authority incurred lighting expenses under this order, and treated them as general expenses under s. 229. A poor rate having been made to defray the expenses, a railway company was assessed in respect of the full rateable value of the property which consisted of land occupied and used as a railway:—*Held*, that upon the true construction of the order the rural authority was invested only with the power of an urban authority to incur lighting expenses under the provisions of the first paragraph of s. 161, and not with the rating powers applicable to an urban authority; that the expenses were rightly treated as general

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and not as special expenses under s. 229; and that the company was not entitled to be rated under s. 211 in the proportion of one-fourth part only of the rateable value (*L. & Y. Rail. Co.* v. *Bolton Union* (1890), 15 App. Cas. 323; 54 J. P. 532).

It may be noted, however, that most orders putting the first paragraph of the section in force in a rural parish contain a provision that the expenses of the rural council in executing the powers shall be chargeable as special expenses upon the parish.

Liability for negligence in respect of lighting.

Where trustees of a public road were empowered to place lamps along the road, but failed to do so, it was held that they were not liable in an action to a person injured by reason of the road not being lighted (*Harris* v. *Baker* (1815), 4 M. & S. 27). In a case where a brougham ran against a lamp post at a dangerous point, the court held that the failure to light the lamp was not negligence, there being no statutory obligation to do so (*Mellor* v. *Heywood* (*Mayor, etc. of*) (1884), 48 J. P. 148).

Harris v. *Baker* was followed in *Cowley* v. *Newmarket L. B.*, *ante*, p. 255. By the Metropolis Management Act, 1855, s. 130, the lighting authority have a discretion as to the time during which public street lamps shall continue lighted, and when they have bonâ fide exercised their discretion in that respect they are not liable on the ground of either nonfeasance or misfeasance for any accident, caused through the lights having been turned out at the hour ordered (*Young* v. *St. Mary, Islington* (*Vestry of*) (1896), 60 J. P. 821). On the other hand, where the defendants, who were both the highway and the lighting authority, had erected a post in the centre of a footpath at its entrance to prevent cattle straying upon it, and had placed a lamp near the post, which they were in the habit of lighting at night, and the plaintiff, passing along the footpath at night, when the lamp was not lighted, came against the post and was injured, it was held that the defendants were liable (*Lamley* v. *East Retford* (*Mayor, etc. of*) (1891), 55 J. P. 133. In *Sheppard* v. *Glossop Corporation*, [1921] 3 K. B. 132; 85 J. P. 205, a lamp which had been placed on a retaining wall was extinguished every night. The plaintiff whilst the light was extinguished missed his way without negligence, strayed on to private land and fell over the retaining wall into the street and was injured. It was held in an action for negligence against the authority that s. 161 imposes no obligation on a local authority to light the streets in their district, that the defendants, although they had begun, were not bound to continue the lighting of the street and that not having done anything to make the street dangerous they were not bound to give warning of danger. See also *Martin* v. *Blackburn Corporation* (1907), 71 J. P. N. 124 (a county court case), and *McClelland* v. *Manchester Corporation*, on p. 257, *post*, where street lights were misleading; and see *Ryan* v. *Tipperary C. C.* and other cases on p. 256, *ante*, as to the duty of a highway authority to provide for the safety of the public during any interference with a road.

See also the following cases during the recent war of accidents where negligence was alleged arising out of the restrictions in public lighting imposed by order under the Defence of the Realm Acts, *Brown* v. *Lambeth Borough Council* (1915), 32 T. L. R. 61; *Gt. Central Rail. Co.* v. *Hewlett*, [1916] 2 A. C. 511; 80 J. P. 361; *Morrison* v. *Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277; *Baldock* v. *Westminster City Council*, (1919) 83 J. P. 98; 17 L. G. R. 190; *Carpenter* v. *Finsbury Borough Council* (1920), 84 J. P. 107.

Discretion as to site for lamp posts.

The authority have a discretion where to erect lamp posts, and the proper exercise of their discretion will not be interfered with at the suit of adjoining owners even though they complain of such posts obstructing the access to their premises (*Chaplin* v. *Westminster Corporation*, [1901] 2 Ch. 329; 65 J. P. 661; and *cf. Goldberg & Sons, Ltd.* v. *Liverpool Corporation* (1900), 82 L. T. 362; 16 T. L. R. 320; *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135).

(*e*) See s. 52, note (*b*), *ante*, p. 126. There is no reference here to personal pecuniary profit.

Companies without statutory powers.

It will be observed that the section gives no protection to gas companies who are not regulated by parliamentary powers. The L. G. B. once stated, however, that although there is no insuperable difficulty in the way of the issue of a Provisional Order enabling an urban council to set up and maintain gasworks in opposition to an existing company, and without purchasing their undertaking, the Board would not be disposed to issue a Provisional Order for that purpose unless some very exceptional reasons were shown for the application. As already pointed out the Board of Trade,

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not the M. of H., now exercise the powers formerly vested in the L. G. B. and the provisions of the Gas Regulation Act, 1920, must be considered, *post*, Vol. II.

(*f*) It will be observed that the statutory company must be actually supplying gas within the district, as well as empowered by their Act or order to do so. In a case in which part of the district of an urban council applying for a Provisional Order was found to be within the gas limits of the council of a neighbouring borough, though gas had never been supplied within the area, the L. G. B. required the observations of the town council upon the subject of the application, and eventually inserted a provision in the order to the effect that the town council's powers should not be prejudiced or affected if at the expiration of five years from the passing of the confirming Act the urban council were not furnishing, or prepared on demand to furnish, a supply of gas in the area.

Companies not actually supplying.

(*g*) This is only an enabling power. There is no obligation upon the urban authority to undertake these works, but they are not to set up gasworks to compete with companies or other bodies under statutory powers. But though they may not themselves undertake a supply in opposition to a company, they may apparently contract with a person other than the company under the first paragraph of the section. As to an authority's liability for a nuisance caused by their gasworks, see *Wood* v. *Conway Corporation* (1914), 78 J. P. N. 171.

It would seem that an authority to whom the undertaking of a company supplying gas under statutory powers has been transferred is in the same position as the company for purposes of this section. See *Wolverhampton* (*Corporation of*) v. *Bilston* (*Commissioners of*), [1891] 1 Ch. 315).

Gas Orders.

(*h*) Now see the Gas Regulation Act, 1920, s. 10, *post*, Vol. II. It is not absolutely necessary for the urban authority to procure an order to enable them to set up gasworks, but they would have none of the powers which are given by the general gas statutes for carrying on such works unless they procured such an order. Whether, if they acquire the undertaking of a company established under a private Act, they can, without such order, avail themselves of all the powers of such Act, is open to doubt. See *Richmond Waterworks Co.* v. *Richmond Vestry*, *ante*, p. 126. See also notes to s. 162, *post*, p. 368.

Regulations as to Orders.

The Board of Trade have made rules dated November 16th, 1920, with respect to applications for special orders under s. 10 of the Gas Regulation Act, 1920, which supersede the general order of the L. G. B. dated September 7th, 1891, under the Acts of 1870 and 1873. This later order must be carefully studied by any council contemplating an application for powers to establish a gas undertaking.

Supply outside district.

An Order issued by the Board of Trade may authorise the urban council to supply gas beyond the limits of their district. See s. 10 (2) (*e*) of the Gas Regulation Act, 1920, *post*, Vol. II. If special reasons exist why such powers should be granted the council may possibly secure the insertion of a clause in the confirming Bill.

Income tax.

As to the assessment to income tax of an authority supplying gas for public and private purposes, see *Dillon* v. *Haverfordwest* (*Corporation of*), [1891] 1 Q. B. 575; 55 J. P. 392.

(*i*) 33 & 34 Vict. c. 70, amended by 36 &37 Vict.c. 89. The earlier Act incorporates the Gasworks Clauses Act, 1847, which was amended by the Gasworks Clauses Act, 1871. The Conspiracy and Protection of Property Act, 1875, s. 4, deals with breaches of contract by persons employed in supply of gas or water. See the above Acts in App. I., *post*, Vol. II.

Power for sale of undertaking of gas company to urban authority.

162. For the purpose of supplying gas within their district or any part thereof either for public or private purposes any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company (*a*), in pursuance, in the case of a company registered under the Companies Act, 1862 (*b*), of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be

Section 162. transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company (*c*), all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

The powers of the M. of H. (as successors to the L. G. B.) under this section were transferred to the Board of Trade by Order in Council dated November 9th, 1920.

Rural districts.

See note to preceding section as to the position of rural councils.

Purchase of gas undertakings.

Compulsory powers for the purchase of gas undertakings cannot be obtained otherwise than by special Act of Parliament.

(*a*) It has been observed that this section is confined to companies. As regards private individuals who may be owners of such works, no provision seems to be requisite. But the section does not in terms apply to public commissioners or trustees holding gasworks.

(*b*) See now the Companies (Consolidation) Act, 1908.

(*c*) A gas company supplied gas in a district, a portion of which was not within their statutory limits of supply. By an agreement made between the gas company and the urban council of the district outside the limits of supply, it was agreed that the company should sell, and the council should purchase, all and singular the works, pipes, mains, meters, and other gas apparatus, and all other the real and personal property (if any) and all effects of the company of whatsoever kind laid down or situate within the district, freed and discharged (as between the company and the council) from all debts, outgoings, and liabilities and all easements, rights, powers, authorities and privileges (if any) enjoyed or exercisable by the company, at a price to be agreed upon, or, in default of agreement, to be determined by arbitration. The agreement further provided that in the case of arbitration, and in the event of the council not continuing to take a supply of gas in bulk from the company, the arbitrators should take into consideration, in fixing the purchase-money, the value of any mains or pipes laid down by the company outside the district of the council for the purpose of supplying gas within the district of the council, which, by reason of the sale, would be rendered useless to the company. By a second agreement, terminable upon twelve months' notice, it was agreed that the council should take a supply of gas in bulk from the company. It was held that the purchase-money was to be assessed on the basis that the sale was a sale of a part of the gas company's undertaking as a going concern, including goodwill. And, further, that the arbitrator should take into consideration the contingency of the council not continuing to take a supply of gas from the company, and should assess compensation in respect of the mains and pipes outside the district of the council provided by the company for supplying gas within such district upon that basis (*In re Hucknall U. D. C. and South Normanton, etc. Gas Co., Ltd.* (1905), 69 J. P. 329; 3 L. G. R. 704). See also p. 121, *ante*, for other decisions upon the construction of "purchase clauses."

Lighting and Watching Act, 1833, to be superseded by this Act.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment (*a*), the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded (*b*) by this Act; and all lamps lamp posts gas pipes fire engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

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As to the circumstances under which this section is sometimes put in force in rural parishes, see note to s. 161.

(*a*) This appears to refer to ss. 272 and 276, *post*.

(*b*) This unusual word is introduced from 21 & 22 Vict. c. 98, s. 46. It is not the same as *repealed*, and, therefore, so much of 3 & 4 Will. 4, c. 90, *i.e.*, the Lighting and Watching Act, 1833, as relates to watching is not, as it seems, affected by this section. The watching provisions are, however, obsolete, though s. 44 as to fire engines is still operative in some rural parishes.

The Lighting and Watching Act, 1833, enabled the inhabitants of parishes, or defined parts of parishes, to adopt the Act and appoint inspectors for carrying into execution its powers for the lighting of streets and public places. Those powers did not extend to the establishment of gas works or the supply of gas to private consumers. Under the L. G. A., 1894, the power of adopting the Act is now vested in the parish meetings of rural parishes, and upon such adoption the parish council, if there is one, becomes the authority for carrying it into execution. If it is desired to limit the incidence of the expenses, as well as the actual lighting, to part only of a rural parish, a parish meeting for the adoption of the Act may be called for that part only. All lighting inspectors who were acting for entire rural parishes having parish councils were, upon the date of operation of the Act of 1894, superseded by such councils, and as regards inspectors who were acting for parts of parishes, provision was made that either the parish meeting, or the inspectors themselves, might transfer the inspectors' powers to the parish council. There are now very few lighting inspectors.

In cases where a rural district council possess urban powers under s. 161 (first paragraph), in regard to a parish, and have exercised those powers, it would seem that that council should carry out any necessary lighting, and that an adoption of the Act of 1833 by the parish meeting would be of no effect. The rural council may, however, delegate their powers to the parish council. If such urban powers, though granted, have not been exercised by a rural council, and the parish meeting desire to adopt the Act of 1833 with a view to the required lighting being regulated under that Act, the parish council should approach the rural council and the M. of H. with a view to the rescission of the urban powers order. Exceptional circumstances should, however, be shown to justify such an Order, as action by a Rural Council has advantages over the other procedure. Under s. 161 no separate assessment to a special lighting rate has to be made and the parish meeting has not to vote an annual maximum sum for lighting purposes.

PUBLIC PLEASURE GROUNDS, ETC.

164. Any urban authority may purchase (*a*) or take on lease lay out plant improve (*b*) and maintain lands for the purpose of being used as public walks or pleasure grounds (*c*), and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Urban authority may provide places of public recreation.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable (*d*).

This section, it will be observed, applies to urban districts only, but a rural council may apply to the M. of H. for urban powers enabling them to provide public walks or pleasure grounds in a particular parish. An alternative method, however, of providing a place for public recreation for the inhabitants of a rural parish is afforded by the L. G. A., 1894, s. 8 (1) (b), which enables parish councils to provide recreation grounds. Such councils moreover possess powers as to village greens, open spaces, and public walks which are for the time being under their control, or Rural districts.

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to the expense of which they have contributed. See ss. 6 (1) (c) (iii) and 8 (1) (d) of the Act of 1894.

See also, as to the powers of a county council in this behalf, the Open Spaces Act, 1906, s. 14, *post*, Vol. II.

Purchase.

(*a*) For the sections of this Act as to the purchase of land, see 175, 176, *post*, pp. 412, 417.

Land outside district.

On the question of the power of a local authority to provide a pleasure ground outside their district, the L. G. B. expressed the view that, while they were not aware of any legal objection to the purchase by an authority under the P. H. A., 1875, of land outside their district for purposes of a pleasure ground, difficulties might arise in recovering penalties under the byelaws, since under s. 253, *post*, proceedings could only be taken by a party aggrieved, or by the council of the district in which the ground was situate, except with the consent of the Attorney-General.

Restrictive covenants.

A corporation acquired land by private contract for the purpose of a public park, and covenanted to keep the land as an open space for the enjoyment of the public, "subject to no buildings or erections of any kind being put thereupon except such structures as summer houses, a bandstand or shelters not exceeding twelve feet in height for the accommodation and convenience of the public." The corporation were in the course of erecting shelters which contained places of convenience, such as lavatories and retiring rooms, for the use of the public. Under their local Act the corporation were authorised to erect conveniences in any public park, and under the P. H. A., 1875, they had a general power to erect conveniences, and also to purchase land for public parks. In an action by the vendors on the covenant, it was held (1) that a public convenience was not *ejusdem generis* with a shelter, and that the covenant had been infringed; (2) that the covenant was not void as imposing a fetter upon the corporation in the exercise of powers conferred upon them by statute for the public benefit (*Stourcliffe Estate Co., Ltd.* v. *Bournemouth Corporation*, [1910] 2 Ch. 12; 74 J. P. 289).

For a case arising out of the erection of a bandstand in breach of a covenant, see *Palliser* v. *Dover Corporation* (1914), 58 Sol. J. 379.

When purchasing land for a pleasure ground, a local authority should take care that third parties do not possess rights which will prevent its being used by the public (*Deane* v. *Ramsgate Corporation* (1892), 8 T. L. R. 199).

Extent of powers as to "laying out," etc.

(*b*) Prior to the P. H. A., 1907, the L. G. B. were decidedly liberal in their interpretation of the words "lay out, plant, improve," and they sanctioned loans upon estimates which included such items as greenhouses, reading-rooms, bandstands, gymnastic appliances, shelters, cycle-tracks, bowling-greens and lakes. Questions sometimes arose, however, as to whether a proposed building or appliance could properly be provided as an adjunct to a public pleasure ground, more especially if it was intended to make a charge for its use. See now, however, ss. 76 and 77 of the P. H. A., 1907, which largely extend the powers of a district council when declared in force in their district by order of the M. of H.

Subject to any restrictive covenants or conditions affecting the land, an authority in whose district the P. H. A., 1907, s. 76, is in force, can apparently set apart a portion of a public park or recreation ground for golf (or any other game). It would seem, however, that, unless they obtain special powers under a local Act, they cannot make any charge for the use of the links (or ground), their powers in the matter of charges being limited by paragraphs (c) and (g) of the section. The L. G. B. took this view.

The Wallasey Urban District Council had, under Parliamentary sanction, become the owners, at a cost of over £90,000, of certain property facing the Mersey at New Brighton, and were authorised to construct a promenade and marine park on the foreshore. In 1909 they promoted a Bill (which passed the House of Commons), by which they sought powers to erect, behind the promenade, a floral hall, pavilion, tea gardens, and concert-hall for the purpose of affording high-class entertainments to visitors to New Brighton. The cost of the buildings, with their equipment, was estimated at £33,900, and provision was made in the Bill for meeting any deficiency arising under the scheme out of the rates. A report from the L. G. B. was presented to the committee in which it was pointed out that some of the powers

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proposed to be taken were very exceptional, but, in answer, it was stated in evidence that similar powers had been granted by Parliament to Bridlington, Rhyl, Birkdale, Clacton, and Margate. The Committee of the House of Lords decided that this portion of the Bill ought not to be allowed to proceed.

Foreshore.

It occasionally happens when a local authority become lessees of the seashore, that they are confronted with claims which conflict with their right of control and management. It was held that a prescriptive right to go upon a foreshore which had been leased to a corporation, and to place and let on hire chairs and seats on the sands for profit could not be claimed, as the Prescription Act, 1832, does not apply to easements in gross (*Ramsgate Corporation* v. *Debling and Others* (1906), 70 J. P. 132; 22 T. L. R. 369). As to the rights of the public on the foreshore, see *Brinckman* v. *Matley*, [1904] 2 Ch. 313; 68 J. P. 534; *Brighton Corporation* v. *Packham*, p. 374, *post*; and cases on pp. 374, 375, *post*, as to byelaws regulating the user of the foreshore; and for a case where a custom to spread nets on land above highwater mark was established, see *Mercer* v. *Denne*, [1905] 2 Ch. 538; 70 J. P. 65. See also as to the rights of the public over a promenade made under local Acts, *Att.-Gen.* v. *Blackpool Corporation* (1907), 71 J. P. 478, and *Walker* v. *Murphy*, [1915] 1 Ch. 71; 79 J. P. 137, as to a "town moor."

The plaintiff agreed with the defendants to supply a band to perform on the sea front. It was a term of the contract that the defendants should hire out 500 chairs to the plaintiff for a certain period at a fixed rental. The plaintiff was entitled to let these chairs to the public, and was under covenant to repair and redeliver them in good order at the end of the term. The plaintiff alleged that many of the chairs as delivered were unfit for use, and that the defendants had been guilty of a breach of an implied term in the contract by allowing persons to use free seats near the band. In an action for damages, the jury found that some of the chairs as delivered were unfit for use, and that the plaintiff had suffered damage owing to the use of the free seats. It was held that there was an implied warranty that the chairs as delivered should be fit for use, but that it was not a further implied term of the agreement that the defendants should not let out free seats (*Dare* v. *Bognor U. D. C.* (1912), 76 J. P. 425; 28 T. L. R. 489).

User of pleasure ground: alienation for different purpose.

(*c*) Where, by Act of Parliament, a corporation was directed to cause a piece of land to be drained and levelled, and kept in proper condition for the purpose of public recreation, the court restrained the corporation from permitting a cattle fair to be held upon it (*Att.-Gen.* v. *Southampton* (*Mayor of*) (1859), 29 L. J. Ch. 282; 1 L. T. 155). A local authority were also restrained from letting a recreation ground to a football club, even for one day (*Att.-Gen.* v. *Loughborough L. B.*, Times, May 31st, 1881). In another case, a municipal corporation purchased a piece of land under the corresponding provisions of the P. H. A., 1848, s. 74. In 1875 the corporation determined to appropriate about a quarter of an acre at one extremity of the land as a site for the erection of town buildings and a museum, public library, school of art, and conservatory. It was held by BACON, V.-C., that no portion of the land could be appropriated for any of these objects except the museum and conservatory. It was held, on appeal, that the erection of a free library was allowable, as being conducive to the better enjoyment of the public walks and grounds as such (*Att.-Gen.* v. *Sunderland* (*Corporation of*) (1876), 2 Ch. D. 634: 40 J. P. 564). See also *Att.-Gen.* v. *Folkestone Corporation*, in note to s. 15 of the Tramways Act, 1870, *post*, Vol. II.; *Att.-Gen.* v. *Leeds Corporation* (1880), 24 Sol. J. 509; *Att.-Gen.* v. *Bradford Corporation* (1911), 75 J. P. 553; 55 Sol. J. 715; *Walker* v. *Murphy*, [1915] 1 Ch. 71; 79 J. P. 137, and other cases collected in note (*h*) on p. 415, *post*, as to the permanent application of land to a purpose other than that for which it was acquired.

When it was proposed by a local authority to appropriate part of a public pleasure ground to some other purpose, the L. G. B. declined under ordinary circumstances to entertain the proposal on the ground that the public has acquired conflicting rights, which, according to *Att.-Gen.* v. *Sunderland*, *supra*, must be respected. It is understood, however, that the M. of H. have considerably modified the view taken by their predecessors in view of s. 95 of the P. H. A., 1907, *post*.

Where in force by adoption, the P. H. A., 1890, s. 44 (1), *post*, gives an authority limited powers to close a park or pleasure ground for short periods, and to give the use thereof to societies, etc.; *ibid.*, s. 44 (2), deals with pleasure boats;

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and *ibid.*, s. 45, enables an authority to contribute to the cost of pleasure grounds provided by individuals.

Where put in force by order of the L. G. B., the P. H. A., 1907, s. 76, *post*, makes further provision as to such matters as skating, games, music, chairs, pavilions and refreshment-rooms in parks and pleasure grounds. See also *ibid.*, s. 77, as to enforcing byelaws and regulations.

Other statutory provisions as to parks, pleasure grounds, and open spaces, etc.

A gift, devise, or bequest for the providing of a public park, etc., is, subject as therein mentioned, exempted from the operation of the Mortmain and Charitable Uses Act, 1888, by s. 6 thereof, as extended by the Mortmain and Charitable Uses Act Amendment Act, 1892. Purchases of land for the purposes of this section are exempt by virtue of s. 7, *ante*, p. 39.

Other Acts relating to the providing of public parks and recreation grounds are 10 & 11 Vict. c. 34, s. 135; 22 Vict. c. 27; 23 & 24 Vict. c. 30. The 26 & 27 Vict. c. 13, provides for the protection of gardens and ornamental grounds, as to which see also 24 & 25 Vict. c. 96, s. 31.

26 Vict. c. 13, s. 1, provides that when in any city or borough any enclosed garden or ornamental ground has been set apart, otherwise than by the revocable permission of the owner thereof, in any public square, etc. for the use or enjoyment of the inhabitants thereof, and when the trustees or other body appointed for the care of the same have neglected to keep in proper order, or when such garden or ground has not been vested or placed in the management of trustees, etc. for the care of the same, and from want of such care or any other cause has been neglected, the corporate authorities shall take charge of the same, putting up a notice to that effect in such garden or ground. As to the meaning of the words "otherwise than by the revocable permission of the owner," see *Tulk* v. *Metropolitan Board of Works* (1867), L. R. 3 Q. B. 94, 682; 32 J. P. 548.

See also the provisions of the Inclosure Acts as to allotments for recreation or other public purposes: 8 & 9 Vict. c. 118; 39 & 40 Vict. c. 56; 42 & 43 Vict. c. 37; 45 Vict. c. 15, s. 3.

As to the metropolis, see 18 & 19 Vict. c. 120, s. 114; 19 & 20 Vict. c. 112, ss. 10, 11; 26 & 27 Vict. c. 13; 29 & 30 Vict. c. 122; 32 & 33 Vict. c. 107; 41 & 42 Vict. c. 37, ss. 8, 9; 42 & 43 Vict. c. 69, ss. 4, 5, 11; 43 & 44 Vict. c. 25, ss. 3, 5, 6; 45 & 46 Vict. c. 15; 61 & 62 Vict. c. 43.

See also as to the management by local authorities generally of open spaces and disused burial grounds, the Open Spaces Act, 1906.

A faculty cannot be granted authorising a churchyard to be appropriated as a public garden. But it was held to be in the discretion of the Consistory Court to authorise by a faculty the construction of footpaths in it for the convenience of the parishioners, the removal of high walls which obstruct the free circulation of air, the planting of it with trees and flowers when it is closed for burials, and the erection of gates in order to give the parishioners access to it, and other minor alterations (*R.* v. *Twiss* (1869), L. R. 4 Q. B. 407). See *Paddington* (*Vestry of*) v. *Earl of Meath and Metropolitan Public Gardens Association* (1898), Times, March 12th; the Open Spaces Act, 1887, and the applications for faculties under it in the cases of *Re Mount Street Burial Ground* (1888), 4 T. L. R. 661; *Re St. George's, Queen's Square, ibid.*, 703; *Re Camden Town Burial Ground* (1888), 5 T. L. R. 311; *Re St. George's-in-the-East* (1876), 1 P. D. 311; *Re St. John's, Hackney*, and *Re St. Mary, Islington* (1893), Times, April 21st; and see now also the Open Spaces Act, 1906, which repealed the Act of 1887, except so much of s. 4 as amends the Disused Burial Grounds Act, 1884. And see also *Re St. Anne, Limehouse* (1915), 31 T. L. R. 539, where on an application by the rector and churchwardens and by the L. C. C. for a faculty authorising an agreement by which the Council was to acquire a strip of a disused burial ground for widening a road the Court declined to decide whether the Council has statutory authority to acquire the freehold of consecrated land and determined to deal with the case in its discretion under the usual procedure which is to grant a user of the land. As to the power of urban authorities to repair fences surrounding burial grounds, see 24 & 25 Vict. c. 61, s. 21, re-enacted in Sched. V., *post*.

The statutes which provided for the procuring of public libraries and public museums have all been repealed and consolidated by the Public Libraries Act, 1892, which has been in turn amended by the Public Libraries (Amendment) Act, 1893, and the Public Libraries Act, 1901; and see the Libraries Offences Act, 1898. All of these Acts are set out in App. I., *post*, Vol. II.

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24 & 25 Vict. c. 97, s. 39, renders persons who wilfully injure works of art monuments or statues in public streets punishable as for a misdemeanor.

As to telegraph wires above recreation grounds, see the Telegraph (Construction) Act, 1908, s. 3.

As to park keepers taking tobacco, etc. from persons apparently under sixteen, see the Children Act, 1908, s. 40.

Authority's liability for accidents in pleasure ground.

As to an authority's liability in respect of accidents in recreation grounds vested in them, see *Giles* v. *London C. C.* (1903), 68 J. P. 10 (cricketer colliding with notice board); *Hastie* v. *Edinburgh Magistrates*, [1907] S. C. 1102, and *Stevenson* v. *Glasgow Corporation*, [1908] S. C. 1034 (children falling into lake or stream); *Glasgow Corporation* v. *Taylor*, [1922] A. C. 44; 126 L. T. 262 (child eating poisonous berries in botanical garden); *cf.* also *Schofield* v. *Bolton Corporation* and other cases cited in note to s. 265, *post*, p. 589.

Rateability of public parks.

As to the assessment of lands acquired and maintained as a park for the perpetual use by the public for exercise and recreation, see *London C. C.* v. *Lambeth Churchwardens*, [1897] A. C. 625; 61 J. P. 580; *Pontefract Assessment Committee* v. *Pontefract Park Trustees* (1898), 78 L. T. 738; *Manchester Corporation* v. *Chorlton Union* (1899), 15 T. L. R. 327; *Liverpool Corporation* v. *West Derby Union*, [1908] 2 K. B. 647; 72 J. P. 397. For Scotch decisions on the subject, see *Glasgow Parish Council* v. *Glasgow Assessor*, [1912] S. C. 818; *Edinburgh Parish Council* v. *Leith Magistrates*, [1912] S. C. 812.

A local authority bought land under s. 164 for the purpose of a public pleasure ground. They were bound by covenants in their conveyance to keep this land open as a recreation and pleasure ground for the use of the public for ever, and they expended an annual sum of £400 in maintenance, at the same time receiving a much smaller sum from such sources as refreshment contractors. It was held that the land could not be regarded as *extra commercium*, and that the authority as owners of it must bear an apportioned share of the cost of making up the private street upon one side of which it abutted (*Herne Bay U. D. C.* v. *Payne*, [1907] 2 K. B. 130; 71 J. P. 282).

Byelaws as to pleasure grounds, etc.

(*d*) As to the making, confirming, and publishing of byelaws, see ss. 182—189, *post*, pp. 432 *et seq.*; and as to the enforcing them, see s. 251, *post*. The section in the text gives a power not previously enjoyed—namely, one for the removal of persons offending against the byelaws. Model byelaws have been issued under this section. (See Mackenzie and Handford's Model Byelaws, Vol. I., p. 38.) Under the Advertisements Regulation Act, 1907, s. 2, local authorities can make byelaws regulating the exhibition of advertisements which affect injuriously the amenities of public parks, pleasure promenades, and ancient monuments. See the Act in App. I., *post*, Vol. II.

In some cases a public pleasure ground vests in the council of a borough in their municipal capacity. Under such circumstances the M. of H. do not consider that it is competent to the council to exercise the power of making byelaws under s. 164, *supra*, in relation to such a pleasure ground. In a case of this kind the Central Department drew attention to the terms of the Municipal Corporations Act, 1882, s. 109, as amended by the L. G. A., 1888, s. 72, and suggested as a means of enabling the council to make byelaws for the regulation of the ground under s. 164 that the council should determine to appropriate the ground for the purposes of the section with a view to the ground being dealt with by them as a sanitary authority. If the council decided to adopt this course they should, after compliance with the requirements of the Municipal Corporations Act, 1882, s. 23, submit in a memorial under their corporate seal a proposal to appropriate the ground as a public walk or pleasure ground to be thereafter maintained and controlled by them in their capacity of sanitary authority. The letter added that if the council considered that the transfer should be made conditional upon payment by the sanitary authority to the municipal authority, such payment should, in the Board's opinion, be in the form of an annual rent; and that the amount of this proposed payment should be stated in order that the Board might embody this condition in their approval of the transaction.

The powers of a district council under s. 164, *supra*, and s. 44 of the P. H. A., 1890, as regards byelaws and otherwise in relation to recreation grounds and public walks, are made applicable to parish councils by the L. G. A., 1894, s. 8 (1) (d), for the purpose of enabling such councils to regulate recreation grounds, village greens,

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open spaces, or public walks which are for the time being under their control or to the expense of which they have contributed.

By a scheme made under the Metropolitan Commons Act, 1866, and confirmed by the Metropolitan Commons Supplemental Act, 1877, it was provided that a common should be dedicated to the use and recreation of the public as an open and unenclosed space for ever; and the Metropolitan Board of Works were empowered to frame byelaws and regulations for the prevention of nuisances and the preservation of order on the common. The Board made a byelaw prohibiting the delivery of any public speech, lecture, sermon, or address of any kind, except with the written permission of the Board first obtained, and upon such portions of the common, and at such times as might be directed by such permission and sanctioned by the Board:—*Held*, that such byelaw was valid. No right of the general public to hold meetings on a common is known to the law (*De Morgan* v. *Metropolitan Board of Works* (1880), 5 Q. B. D. 155; 44 J. P. 296). This decision was followed in *Brighton Corporation* v. *Packham* (1908), 72 J. P. 318; 24 T. L. R. 603, where the corporation, owners of the foreshore, obtained an injunction restraining members of a mission from preaching and holding meetings thereon.

A byelaw relating to a common provided that "no person shall shoot or chase game or other birds or animals on the common." The respondent carried a tame pigeon and a falcon, and when on the common let them both go, and ran after them for half a mile, watching the chase:—*Held*, that this was an offence within the meaning of the byelaw (*Harper* v. *Mitchell* (1879), 44 J. P. 378).

Under s. 164 (*supra*) a local board made byelaws for the regulation of a pleasure ground. One byelaw provided that no person should suffer any fowl belonging to him to enter or remain in the pleasure ground. The fine for offending was £5. B.'s six fowls strayed inside, there being no fence sufficient to prevent them:—*Held*, that the justices were right in refusing to convict, as the byelaw was repugnant to the law of England, and was not warranted by the section (*Torquay L. B.* v. *Bridle* (1882), 47 J. P. 183).

Byelaws as to foreshore.

An authority was empowered by a local Act to make byelaws and regulations with reference to the sea beach and foreshore in the district, which were vested in them for the purpose of public walks and pleasure grounds. After the passing of the local Act, a part of the foreshore was converted into an esplanade. The authority made a byelaw prohibiting the sale of any goods on any part of the sea beach, foreshore, or esplanade, except by the direction of the authority:—*Held*, that the byelaw was not unreasonable or *ultra vires* (*Gray* v. *Sylvester*) (1897), 61 J. P. 807; 46 W. R. 63). See also *Llandudno U. D. C.* v. *Woods*, [1899] 2 Ch. 705; 63 J. P. 775.

By a local Act a corporation was empowered to make byelaws for (*inter alia*) regulating the selling and hawking of any article . . . on the beach and foreshore, and No. 3 of such byelaws provided that "a person shall not on the said beach or foreshore sell or hawk, or offer, or expose for sale any article . . . except in pursuance of an agreement with the corporation . . ." It was held that the byelaw was unreasonable and bad on the ground that it gave the corporation power to make any agreement they chose without regard to the question of its reasonableness or unreasonableness, and that it reserved to them a right to refuse to give a licence to any particular person (*Parker* v. *Bournemouth* (*Mayor, etc. of*) (1902), 66 J. P. 440; 86 L. T. 449). See also *Moorman* v. *Tordoff* (1908), 72 J. P. 142; 98 L. T. 416.

The respondents' local Act empowered them to make byelaws for prohibiting or regulating the erection on the foreshore, sands or wastes, of any booth or other erection, which in their opinion might be a cause of danger, obstruction, nuisance, or annoyance, and generally for regulating the user of the foreshore, sands and wastes. They made a byelaw in 1888 forbidding the erection of any booth or other erection on the foreshore, sands or wastes, provided that the prohibition should not apply in any case where the respondents granted permission for the erection, and in 1900 they made an additional byelaw that no person should on any part of the foreshore sell or offer for sale any commodity except on such part of the foreshore as they should by notice appoint for the purpose. The appellant erected without permission a certain structure (a coffee van) which the justices found to be an erection within the byelaw of 1888, and they convicted the appellant. A Divisional Court held (distinguishing the *Bournemouth Case*, *supra*) that the byelaw was valid, as the local Act gave power to the respondents to say that any

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booth or erection was primâ facie a cause of danger, obstruction, nuisance or annoyance, and the byelaw was not rendered invalid by the fact that the respondents had reserved to themselves a power to grant permission in particular cases (*Williams* v. *Weston-super-Mare U. D. C.* (No. 1) (1907), 72 J. P. 54). The appellant then brought an action against the respondents in the Chancery Division, alleging a customary right exercised for sixty years to sell from a stall or otherwise on the foreshore, and claimed (a) a declaration that the said byelaws were *ultra vires* and void; (b) a declaration that his coffee van was not an "erection" within the meaning of the byelaw of 1889; and (c) an injunction to restrain the respondents from interfering with his selling from his coffee van on the foreshore. The court followed the decision of the Divisional Court on the points decided by them and also declined (following *Grand Junction Waterworks Co.* v. *Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566) to make a declaratory order under Order XXV., r. 5, with regard to the byelaw of 1900 (*Williams* v. *Weston-super-Mare U. D. C.* (No. 2) (1910), 74 J. P. 370; 103 L. T. 9).

Under the Hastings Improvement Act, 1885, the corporation may make byelaws "for the preservation of order and good conduct among persons frequenting the parades, stade, foreshore, and sands," and they accordingly made a byelaw, which was approved by the L. G. B., that no person should deliver an address on any part of the parades, stade, foreshore, or sands, except on such portions thereof as the corporation might by notice appoint for the purpose. The corporation by notice from time to time appointed certain portions of the stade as places at which addresses might be delivered, but these notices were not submitted to the L. G. B. for approval. The appellant, a member of the Salvation Army, conducted a religious service and delivered an address on a portion of the stade which was not one of the places so appointed, and was convicted of contravening the byelaw. It was held, that as the power to fix the places at which addresses might be delivered was set out in the byelaw it was not necessary to submit the notices to the L. G. B. for approval, and that the byelaw was valid, and therefore the conviction must be affirmed (*Slee* v. *Meadows* (1911), 75 J. P. 246; 105 L. T. 127).

Under the Ramsgate Corporation Act, 1900, the corporation "may make and enforce byelaws for the prevention of danger obstruction nuisance or annoyance to persons using the seashore . . . for regulating the selling and hawking of any article commodity or thing on the seashore . . . ," and they made a byelaw that "where any part or parts of the seashore has, or have, by notices affixed in conspicuous positions on the seashore, been set apart by the corporation for the hawking of such articles commodities or things as may be specified in the notices, no person shall hawk any article, commodity or thing so specified on any other part of the seashore." Notices were put up setting apart a portion of the seashore for the hawking of certain articles and forbidding the hawking of them on any other portion. The corporation had let spaces for the erection of stalls on that portion of the seashore where hawking was prohibited. It was held that the byelaw was valid (*Cassell* v. *Jones* (1913), 77 J. P. 197; 108 L. T. 806).

As to byelaws regulating bathing from the foreshore, see *McGregor* v. *Disselduff*, p. 434, *post*.

An authority can now obtain powers to make byelaws as to the seashore and also as to promenades by getting the P. H. A., 1907, ss. 82, 83, *post*, applied to their district.

Urban authority may provide public clocks.

165. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

The provision in the text does not empower the urban authority to repair, etc. clocks not *provided* by themselves and not transferred to them, such as the clock of a parish church. Where, however, the P. H. A., 1890, s. 46, *post*, is in

Note to Section 165.

force by adoption, this section is extended so as to enable an urban authority to pay the reasonable cost of repairing, maintaining, winding up, and lighting any public clock within their district though not vested in them.

The provision in the Act of 1890, referred to above, enables an urban authority to incur expense in repairing, winding, etc. the clock in a church tower. If it is desired to place a *new* clock in a church tower, a necessary preliminary would seem to be the obtaining of a faculty from an ecclesiastical court.

The M. of H. are willing to sanction loans for the provision of public clocks by urban authorities, and to allow a term of ten years for repayment.

It will be observed that the section does not authorise the provision of a tower to contain a clock. In a case in which an urban council applied to the L. G. B. for sanction to a loan for the erection of a handsome tower with a clock at the summit, the Board considered that they were precluded from acceding to the application so far as the tower was concerned. It would seem, however, that the word "clock" must be regarded as including a case, and also some sort of support, and the Board has not raised any objection when the structure proposed was unpretentious and distinctly required for the purposes of the clock. The view of the M. of H. is probably similar. Apart from the powers of s. 165, *supra*, public clocks are sometimes provided under the Baths and Washhouses Acts, the Public Libraries Acts, the Municipal Corporations Act, 1882, and other Acts as part of a building erected under such Acts.

Where the P. H. A., 1890, s. 42, *post*, is in force by adoption, the authority may authorise the erection of a clock tower in any street or public place, and may maintain the same, and may also maintain a tower already erected.

It is not clear that a parish council can legally incur expense in relation to a public clock even if it is transferred to them under the L. G. A., 1894, s. 8 (1) (h). The L. G. B. generally advised action by the rural district council under s. 165, *supra*, as extended by s. 46 of the Act of 1890, after obtaining from the Board an order conferring upon them the necessary urban powers. Such orders usually provide that the expenses shall be chargeable as special expenses to the parish concerned. The actual maintenance of the clock can be delegated to the parish council.

MARKETS AND SLAUGHTER-HOUSES.

Urban authority may provide markets.

166. Where an urban authority (*a*) are a local board or improvement commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by Schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two-thirds of their number, to do the following things, or any of them, within their district (*b*):

To provide (*c*) a market place, and construct a market house and other conveniences, for the purpose of holding markets:

To provide houses and places for weighing carts (*d*):

To make convenient approaches to such market:

To provide all such matters and things as may be necessary for the convenient use of such market:

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes:

To take stallages rents and tolls (*e*) in respect of the use by any person of such market:

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges (*f*) enjoyed within the district (*g*) by any person (*h*) without his consent.

Note to Section 166.

(*a*) It will be observed that the powers of this and the two following sections were conferred upon urban authorities only, and the L. G. B. always held that there were insuperable legal difficulties in the way of making the sections applicable to rural districts (by order under s. 276). This disability was removed by the P. H. A., 1908, *post*, which enabled rural councils, with the consent of the Board, now M. of H., to exercise with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under s. 166 of the Act of 1875. Thereupon ss. 167 and 168 also become applicable to a rural council.

Rural authorities.

Rural district councils who contemplate an application to the M. of H. for consent to exercise market powers should pass a resolution in the terms of s. 166 of the Act of 1875, and it is desirable (as in urban cases, see *infra*) that, whatever may be proposed at the moment, this resolution should be in wide terms so as to enable the council to do all the things mentioned in the section. A copy of this resolution should be sent to the Ministry, accompanied by full information as to the action which the council propose to take in the matter of markets, and by a statutory declaration by the clerk testifying that the establishment or re-establishment of a market will not affect any rights, powers, or privileges in respect of any market within seven miles of the lands or premises to be acquired or provided for any of the purposes of s. 166 of the Act of 1875, as applied by the Act of 1908, or where any market rights to be acquired in pursuance of the applied enactment are exercisable within defined metes or bounds, within seven miles of those metes or bounds. For the purpose of enabling the clerk to make such a declaration it is necessary for a district council to take all such steps as may be requisite to ascertain the facts as to the existence of such rights, etc. within the distance specified, and the information thus obtained should be embodied in the declaration. The Ministry will also require plans of any market scheme which has been prepared, information as to agreements for land purchase, financial particulars of the district, and proposals as to the incidence of the anticipated expenses.

Several rural district councils have obtained powers for the provision of markets or the acquisition of existing market rights—in some cases for particular parishes.

Parish councils have no powers in relation to markets, and there are no legal means by which they can obtain such powers.

(*b*) For the definition of "local board," see s. 4, *ante*, p. 4; of "improvement commissioners," s. 4, *ante*, p. 4; of "owners," s. 4, *ante*, p. 8.

Powers optional.

It will be seen that there is no compulsion upon a local authority to act, notwithstanding the resolution of their constituents; and that there must be in the case of a town council, the consent of two-thirds of all the members of the council, not of that of a meeting.

Fairs.

It must be noticed that there is only power to establish a *market*. No power is given to establish a *fair*, or to purchase fair rights, and the Markets and Fairs Clauses Act, 1847, is only incorporated by s. 167 so far as it relates to markets.

The L. G. B. stated that they had been advised by the law officers to the effect that a local authority cannot legally purchase or take on lease a right of holding or taking tolls for fairs either with a view to the exercise of the right themselves or to the re-sale or re-leasing of the right, and that any conveyance or lease which purports to convey or grant to an authority the right of holding fairs as well as markets is invalid, unless the two parts relating to fairs and to markets respectively are severable, or unless it is clear that no portion of the consideration, if entire, were given for that which it is beyond the power of the authority to purchase. The Board stated further, however, that although negotiations with the owners of the existing franchise could legally be carried on with a view to the *purchase* of fair rights by an urban council, the Board were not aware of any objection to negotiation for the purpose of obtaining any such consent as would justify subsequent procedure for the *abolition* of the fairs. See the Fairs Acts of 1871 and 1873. As to what is a fair, see *Collins* v. *Cooper* (1893), 57 J. P. 248; 9 T. L. R. 250.

Where the owner of a weekly market and of certain annual fairs leased the market to a council, but reserved the fairs, it was held that the council could hold the market on its proper days, though they happened also to be fair days (*Newcastle (Duke of)* v. *Worksop U. D. C.*, [1902] 2 Ch. 145).

Note to Section 166.

A council's market rights restricted to their district.

It must be noticed that the market place is to be within the district. A town council who were about to provide a market place, and to construct a market house, for the purpose of holding markets within the borough, desired to extend their limits for market purposes *beyond* the borough in order to prevent any opposition market being established just outside the municipal boundary. The L. G. B. stated that they were not aware of any means by which, under the general law, the market rights of the council could be extended beyond the limits of the borough.

By the L. G. A., 1858, s. 50, local boards were given power to establish markets, and by s. 12, *ante*, p. 43, markets established under the Act of 1858 became vested in the urban sanitary authorities constituted under this Act.

The power of a local authority to act under s. 166, *supra*, is an inalienable power and a covenant not to act under it would be void (*Spurling* v. *Bantoft*, [1891] 2 Q. B. 384 ; 56 J. P. 135).

Combination of authorities.

The L. G. B. once informed a town council that it appeared to them that the legal difficulties in the way of joint action by the town council and a rural district council in the matter of a new market were likely to be formidable, if not prohibitive.

The resolution of ratepayers.

In cases of application by urban councils to the M. of H. for sanction to loans for market purposes, the Ministry require to be informed whether a resolution of owners and ratepayers has been passed as required by s. 166, and in this connection they require to be furnished with the following evidence in proof of the validity of the proceedings : (a) The requisition on which the meeting of owners and ratepayers was summoned ; (b) A copy of the notice of the meeting, a certificate of the posting of such notice on the church and chapel doors and a copy of the newspaper containing the advertisement of such notice ; and (c) A certificate of the posting of a copy of the resolution passed at the meeting and a copy of each of the newspapers in which the resolution was advertised for three successive weeks.

The Ministry consider that the resolution should follow as closely as possible the terms of s. 166, and should relate to all the matters mentioned in the section so that the council may not be under the necessity of taking fresh proceedings if further action is proposed under the section at any future time.

Shops connected with market.

The Ministry are apparently willing to regard shops as forming part of a market when there is to be an entrance from the market or its approaches.

Markets under the Diseases of Animals Act, 1894.

Local authorities within the meaning of the Diseases of Animals Act, 1894, (viz. : the town councils of boroughs of not less than 10,000 population in 1881, and elsewhere the county council) may provide markets under that Act. By s. 32 (1) " a local authority may provide, erect, and fit up wharves, stations, lairs, sheds, and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign or other animals, carcases, fodder, litter, dung, and other things." Sub-section (2) incorporates with the Act the Markets and Fairs Clauses Act, 1847, except ss. 6 to 9 and ss. 51 to 60 thereof ; and sub-s. (3) enacts that a wharf or other place provided by a local authority under the section shall be a market within the incorporated Act, that the Act of 1894 shall be the special Act, and that the prescribed limits shall be the limits of lands acquired or appropriated for purposes of the action. Sub-section (3) relates also to byelaws for the market ; sub-ss. (4), (5), and (7) relate to charges or tolls for the use of any wharf or other place provided under the section ; sub-s. (6) concerns accounts and returns ; and by sub-s. (8) the provisions of the section apply to a wharf or other place provided by a local authority under the Contagious Diseases (Animals) Act, 1869, or under the Contagious Diseases (Animals) Acts, 1878 to 1893. The provision of a market, however, under this Act is largely affected by the powers which the Ministry of Agriculture and Fisheries possess of making orders concerning animals and other things ; *e.g.*, they can prescribe the ports at which alone foreign animals may be landed.

Purchase of land and market rights.

(*c*) Sections 175, 176, *post*, p. 412, enable the authority to acquire land for these places, houses, and approaches, compulsorily if necessary. The authority will be the judges of what lands are necessary for the works, and they will not be restricted by the words, "*a* market house," from constructing more than one if necessary (*Richards* v. *Scarborough Public Market Co.* (1853), 23 L. J. Ch. 110). Apparently the compulsory powers do not extend to the acquisition of market rights : see the concluding words of the section. Market rights may, however, be acquired by arrangement under this section and s. 168, *post*, p. 389.

Note to Section 166.

Franchise markets and tolls therein.

With reference to the provision as to the purchase of market rights it must be borne in mind that a franchise market is a species of property apart from a liberty of taking tolls, which latter is a separate franchise; any conveyance or lease should, therefore, extend as well to the franchise tolls as to the franchise market. Also, when a market is to be conveyed or leased, it must be remembered that the franchise and the market place are distinct properties (see *per* BRETT, M.R., in *Att.-Gen.* v. *Horner* (1884), 14 Q. B. D., at p. 254; 49 J. P. 326), and that a conveyance or lease of the one is insufficient to pass the other.

According to advice received from the law officers by the L. G. B. (First Report of Royal Commission on Market Rights and Tolls, 1888, Vol. II., p. 4; see also Final Report, 1890, p. 10), a council, after purchasing a franchise market with franchise tolls, may levy these tolls without first obtaining the M. of H.'s approval under s 167, *post*, p. 385, the reason apparently being that such tolls are levied by virtue of the franchise, and not by virtue of powers conferred by this Act. But, according to the same advice, the council cannot alter such tolls, or at any rate cannot alter them to an extent not justified by the franchise, unless the Ministry's approval of the tolls as altered has been first obtained. It seems to follow that where a franchise market with franchise tolls has been purchased, there are, as a rule, two courses open to the council: (1) They may exercise the franchise rights in strict accordance with the common law. (2) They may take the benefit of s. 167, and regulate the market with the tolls in accordance with that section and the sections of the Markets and Fairs Clauses Act, 1847, which it incorporates. But, if they adopt this second course, they cannot, it seems, continue to exercise the old franchise rights in a manner not consistent with those provisions (see *per* WOOD, V.-C., *Ellis* v. *Mayor, etc. of Bridgnorth* (1861), 2 John. & H. 67); and it is, perhaps, questionable whether the old rights remain or become merged in the statutory rights adopted under s. 167. See *Mayor, etc. of New Windsor* v. *Taylor*, [1899] A. C. 41; 63 J. P. 164; *Mayor, etc. of Manchester* v. *Lyons* (1882), 22 Ch. D. 287; *Mayor, etc. of Birmingham* v. *Foster* (1894), 70 L. T. 371; and *Stevens* v. *Chown*, [1901] 1 Ch. 894; 65 J. P. 470.

If, however, a local authority do not purchase, but take only a lease of rights in markets or tolls, it is submitted that recourse cannot be had to s. 167 so as to contravene the terms of the lease or injure the lessor's reversionary interest.

Loans for market purposes.

The sanction of the M. of H. is not required for the purchase of market rights under s. 166 or s. 168; but a council cannot borrow money for the purpose of making the purchase without the Board's sanction under s. 233, *post*, p. 521. The Ministry allow a maximum term of sixty years for the repayment of loans for the purchase of lands for market purposes, and for the acquisition of market rights, and thirty years in the case of loans for buildings. Paving works, pens, and fittings are allowed a shorter period.

Markets vested in borough council under Municipal Corporations Acts.

When a borough council apply to the Ministry for sanction to a loan for the improvement of a market, and it is found that the market is vested in the council in their capacity of municipal authority, the Department has frequently suggested that it would be preferable to bring the market under the provisions of the P. H. A., 1875, so that, after the procedure indicated in s. 166 of that Act, the application may be treated as one for sanction to a loan by the council in their capacity of urban sanitary authority. The reason is that it is held to be undesirable that matters for which express provision is made under other enactments should be dealt with under the less specific power contained in the Municipal Corporations Act, 1882. The Act of 1875 contains the only express enactment of the general law relating to the provision and regulation of markets by borough councils, and by its incorporation of the more material provisions of the Markets and Fairs Clauses Act, 1847, it enables borough councils, in the capacity of urban sanitary authority, *inter alia*, to levy tolls and to make byelaws for the regulation of the markets.

See also the article "Markets and Fairs" in Vol. IV. of the Encyclopædia of Local Government Law.

Distinction between franchise and P. H. A. markets.

Unless in any instance the contrary be stated, the statements contained in this portion of the note relate only to franchise markets; a local authority is in a different position, according as its rights are those of an owner of a franchise market, or the market has been set up on a site acquired under the provisions of the P. H. A., 1875.

Note to Section 166.

Market days.

In *Att.-Gen.* v. *Horner*, [1913] 2 Ch. 140; 77 J. P. 257, the defendant's charter mentioned only Thursdays and Saturdays as market days; he was in fact holding markets on every weekday, and for justification relied on the doctrine of a lost grant; it was held that the market was confined to the two days, there being no ground for presuming a lost grant. On other days it was illegal for him to demand tolls or other payments depending on his market franchise; but as owner of the market-place he could exercise the ordinary rights of an owner of property, so long as in so doing he did not contravene any obligation imposed on him by his franchise. And see *Maskell* v. *Horner*, [1915] 3 K. B. 106; 79 J. P. 406.

Market place: power to change.

An owner of a market may, so long as he is not tied down to a particular place by the charter creating the franchise, hold the market wherever he most conveniently can (*Dixon* v. *Robinson* (1686), 3 Mod. 107). It is his duty to find, within the district in which he is entitled to hold his market, land to which the public will have free access while it is being held (*Att.-Gen.* v. *Horner* (1885), 11 App. Cas., at p. 80; 50 J. P. 564). He is not, as a rule, bound to hold it upon his own land, but may hold it upon land belonging to other persons by their permission, though, unless he has the actual possession of the land, he cannot claim stallage. See *Lockwood* v. *Wood* (1841), 6 Q. B. 31, 47, where the *dictum* of LITTLEDALE, J., in *R.* v. *Starkey* (1837), 7 A. & E. 95, was not followed; *Att.-Gen.* v. *Horner* (1884), 14 Q. B. D. 245, 254, 260; 49 J. P. 326; (1885), 11 App. Cas. 66; 50 J. P. 564.

Where a franchise market is not confined by the charter to a spot defined by metes and bounds, but the charter allows it to be held generally within some district, "there is no doubt but that the grantee . . . may hold it anywhere within that district, or in more places than one, and may change the place in which it is held; and an obligation is cast upon him, by his acceptance of the grant, to provide convenient accommodation for all who are ready to buy and sell in the public market." See the opinion of the judges in *The Islington Market Bill* (1835), 3 Cl. & F. 518. The consequences of his not providing a sufficient market-place were stated to be these: (1) He cannot complain of sales outside the market by persons prevented from selling in the market by the want of convenient room (*Prince* v. *Lewis* (1826), 5 B. & C. 363; *Mosley* v. *Walker* (1827), 7 B. & C. 40). (2) His breach of public duty furnishes a ground for a *scire facias* to repeal the patent by which the market was granted. (3) His misconduct perhaps renders him liable to an indictment for a misdemeanor, and also to an action by any individual who sustains special injury. (4) But, so long as the grant remains unrepealed, his default in providing proper accommodation for the public does not entitle the Crown to grant a charter for a new market which will be injurious to his market. The judges also dealt thus with the position of the owner of a market which is limited by grant from the Crown to a fixed place defined by metes and bounds: If the place is insufficient for the needs of the buyers and sellers in the market, and the owner is prevented by the terms of his grant from enlarging it, the Crown may grant a new market, to be held in the neighbourhood, so that the further market accommodation which the public require may be provided, if that can be done without affecting the existing market rights injuriously. See also *G. E. Rail. Co.* v. *Goldsmid* (1884), 9 App. Cas. 927; 49 J. P. 260, and *Magistrates of Edinburgh* v. *Blackie* (1886), 11 App. Cas. 665, 679. As to enlarging a market under a local Act, see *Att.-Gen.* v. *Cambridge* (*Mayor, etc. of*) (1873), L. R. 6 H. L. 303; and generally as to enlarging a market place, see *Att.-Gen.* v. *Horner*, *supra*; *Gingell, Son and Foskett, Ltd.* v. *Stepney Borough Council*, *post*, p. 381.

B. being entitled to a market in the manor of K., which was held in the public street on B.'s soil, removed it to another site in K., which site he had demised, without demising the franchise, for a term of years. The court held that the removal was bad, unless the public had the same privilege in the new market as in the old; and, therefore, it appearing that, although no toll had ever been taken in the old market, the lease, after a covenant by the lessees to allow the soil to be used solely for the market, empowered them to impose rents for the liberty of selling in the market, the court held that the removal was bad, and that the site of the old market might be used on market days as it was before the removal (*R.* v. *Starkey* (1837), 6 L. J. K. B. 202; 7 A. & E. 95). See also the following cases as to removal of markets: *Curwen* v. *Salkeld* (1803), 3 East, 538; *R.* v. *Cotterill* (1817), 1 B. & A. 67; and *Magistrates of Edinburgh* v. *Blackie*, *supra*.

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Where the lord of a manor proved a market to have been immemorially holden in certain places within a manor, it was held not to be a necessary inference (no grant being produced) that the market was granted to be holden in those places only, and that the jury might presume from circumstances that the market was granted to be holden in any convenient place within the manor (*De Rutzen* v. *Lloyd* (1836), 5 L. J. K. B. 202; 5 A. & E. 456). And see *Wortley* v. *Nottingham L. B.* (1870), 33 J. P. 806; 21 L. T. 582, where it was held that a corporation might remove part of a market to any other convenient place within the limits specified in the original grant. A corporation, being lords of a market and owners of the soil, are entitled at common law to remove a market. And where the boundaries of an ancient borough were extended by statute, it was held that the ancient borough market might be removed to a place outside the old but within the new boundaries (*Mayor, etc. of Dorchester* v. *Ensor* (1869), L. R. 4 Ex. 335). But where acting as a local board they take steps under this Act to set up a market in a new place, they can only act under the powers and subject to the provisoes of the statute, and are not entitled to fall back on their common law right (*per* PAGE WOOD, V.-C., in *Ellis* v. *Bridgnorth* (*Corporation of*) (1861), 4 L. T. 112; 9 W. R. 331). In the same case, when tried at common law, it appeared that the corporation had removed the market from the place at which it had been immemorially held. It was held that the occupiers of houses adjoining the old market place might maintain an action for disturbance of those rights which they had hitherto enjoyed of erecting stalls opposite their houses on market days. It was held also that under the corresponding provisions of the L. G. A., 1858, s. 50, the removal of the market was not justifiable, inasmuch as the power to provide market places conferred by that section was expressly qualified by the proviso as to the rights of individuals (32 L. J. C. P. 273; 8 L. T. 668). But where a local Act imposed a penalty for exposing for sale meat, etc., in the streets of a town, so that such meat, etc., projected over any footway, etc., with an exception in favour of stalls in such parts of the streets as had been theretofore used for the purpose at the time of the usual market, and subsequently the local board made byelaws appointing certain places for markets for certain descriptions of goods on market days, it was held that the provisions of the local Act did not exempt from liability to penalties a person who violated the byelaws by exposing for sale meat, etc., at a place other than that appointed by the board, notwithstanding that the place had for many years been used for such sales by such persons and others (*Savage* v. *Brook* (1863), 33 L. J. M. C. 42; 9 L. T. 334).

See also as to the powers of the Ministry of Agriculture and Fisheries in connection with the removal of markets, *post*, p. 383.

Markets in streets.

Part of a public highway is frequently used as a market place, and it is not a misuse of the highway, if it can be shown by evidence, or be inferred from long usage, that the highway was dedicated subject to the right of holding the market there (*Elwood* v. *Bullock* (1844), 6 Q. B. 383; *Att.-Gen.* v. *Horner* (1885), 11 App. Cas. 66; *Twigdon* v. *Shillock* (1898), Times, January 28th). A new street can be dedicated as a highway subject to the exercise therein of market rights. From time immemorial the lord of the manor of Stepney had held a hay and straw market in High Street, Whitechapel. There was evidence that when it was crowded the market had overflowed into adjoining streets. After 1840 two narrow streets, not used for market purposes, were widened and made into new streets by the Commissioners of Woods and Forests, under the powers of the Metropolis Improvement (Additional Thoroughfares) Act, 1840. In 1870 an entirely new street was cut through private property by the Metropolitan Board of Works, under the powers of the Whitechapel and Holborn Improvement Act, 1865. These Acts did not refer to the market rights, but the market was in fact held in the new streets shortly after they were made, as well as in the High Street. Certain railway and tramway Acts contained provisions for the protection of the market in the several streets. It was admitted that the market was without metes and bounds, and that the area of the market franchise extended to the whole manor. It was held by VAUGHAN WILLIAMS and BUCKLEY, L.JJ. (FLETCHER MOULTON, L.J., dissenting), that the new streets must be presumed to have been dedicated to the public subject to the market franchise, and that, therefore, certain regulations made by the defendants, excluding carts and wagons from those streets and restricting the market to certain other streets, were invalid (*Gingell, Son and Foskett, Ltd.* v.

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Stepney Borough Council, [1908] 1 K. B. 115; 71 J. P. 486; affirmed, [1909] A. C. 245; 73 J. P. 273).

The exercise of market rights over highways cannot be prevented by proceedings under statutes for the prevention of obstructions or other nuisances on highways (*Att.-Gen.* v. *Horner*, *supra*; *G. E. Rail. Co.* v. *Goldsmid* (1884), 25 Ch. D. 511; 9 App. Cas. 927; 49 J. P. 260; *Ball* v. *Ward* (1875), 33 L. T. 170). Nor can a byelaw which purports to interfere with such rights be justified under a power to make byelaws against nuisances on highways (*Elwood* v. *Bullock*, *supra*). The right must, however, be exercised in a proper manner. Thus, when the owner of a market took stallage for sheep pens placed on a highway, he was held responsible for the nuisance which arose from his neglect to remove the sheep dung (*Draper* v. *Sperring* (1861), 30 L. J. M. C. 225; 25 J. P. 566). So, too, in *Att.-Gen.* v. *Horner*, [1913] 2 Ch. 140; 77 J. P. 257, it was held that the defendant, the lessee of the land and buildings known as Spitalfields Market, and of the franchise for holding a market therein, being only entitled to hold the market on Thursdays and Saturdays, the days mentioned in his charter, had no right except on those days to use or authorise the user of the streets in or about the market place further than he was entitled to use them as one of the public or as a person having land adjoining a highway. The L. G. B. raised no difficulty in sanctioning the purchase by a council of existing rights pertaining to the holding of a market in a public street, when the market could be described as held in a fixed place or was to be acquired in connection with the establishment of a market place by themselves. In answer, however, to an inquiry as to whether a council could set apart part of the highway for stall-holders, etc., practically making it a market place, and charge the stall-holders a certain toll for their stands, the Board stated that it did not appear to them that the council had any power to obstruct the highway in the manner proposed, and that no action which they could take under s. 166 would have the effect of conferring such power. In another case in which a council proposed to take over the markets and fairs periodically held in their district, the Board pointed out that as no market in the streets was legally established by charter or otherwise to which the provisions of the Act of 1847 would be applicable, and it was not intended to provide a market, the Board were unable to indicate any procedure which would enable the council to control and regulate the sale of animals and goods in the streets of the town or to levy tolls.

The holding of a market on a highway involves the question of liability for the speedy removal of refuse and litter. An Order of the Board of Agriculture dated June 29th, 1910, under the Diseases of Animals Act, imposed certain duties in this matter on the occupier of cattle markets, or the local authority (not always the District Council: see note on p. 378, *ante*). Under s. 42 of the P. H. A., 1875, a district council may cleanse streets: see notes thereto, *ante*, p. 111.

Lease of market by council.

It is doubtful whether an urban council can dispose of a market by letting it under s. 177. In the case of such a proposal the L. G. B. said they were disposed to consider that the council by obtaining the powers authorised by s. 166 had become subject to certain obligations with regard to the continued provision of market facilities, and that it was open to question whether the mere disuse of their powers would so far extinguish their obligations as to bring the market place into the category of lands which they could conveniently spare. It is not known whether the question has arisen since the establishment of the Ministry of Health.

Grant of exclusive use of market.

The L. G. B. informed an urban district council that they were not aware of any authority under which the council could restrict to one or more persons the right of selling in the market. The Board referred to *Mayor, etc. of Northampton* v. *Ward* (1745), 2 Stra. 1238, and other decisions.

Liability of owners of market.

With regard to the liability of a corporation as owners of a market the following case may be referred to: The defendants were owners of a cattle market, and in the market place they had erected a statue with a railing round it as a fence. The plaintiffs attended the market with their cattle, and occupied a particular site for which they paid a toll. A cow belonging to them, in attempting to jump the railing, injured herself and died from the injuries. The jury found that the railing was dangerous:—*Held*, that the defendants having received tolls from the plaintiffs and invited them to come to the market with their cattle, a duty was imposed on them to keep the market in a safe condition, and that therefore an action would

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lic against them for the loss sustained by the plaintiffs (*Lax* v. *Darlington* (*Mayor, etc. of*) (1880), 5 Ex. D. 28 ; 44 J. P. 312).

Powers of control vested in the Ministry of Agriculture.

Under s. 22 (xix) of the Diseases of Animals Act, 1894, the Ministry of Agriculture and Fisheries have power to prohibit or regulate the holding of markets . . . and sales of animals, a power the exercise of which may result in the removal of a market or the closing of it altogether. The Ministry may also make orders for prescribing and regulating the cleansing and disinfection of places used for the holding of markets for the sale of cattle, sheep, goats, other ruminating animals, or swine (see above as to an Order of 1910) ; and for prescribing modes of cleansing and disinfection. See ss. 22 (xx), (xxii) and 59. Other powers of the Ministry, exercisable in relation to markets, will be found in ss. 9, 21 and 22 of the same Act.

Disturbance of market.

An owner of a franchise market is entitled at common law to the enjoyment of his privileges without disturbance by the wrongful acts of other persons. Room for a fuller discussion as to what amounts to a wrongful disturbance, and as to the remedies open upon such a disturbance, cannot be found within the limits of this note, but reference may be made to the article on markets and fairs in Vol. IV. of the Encyclopædia of Local Government Law. Some of the more important cases will, however, be referred to. As to a market established or regulated under the Public Health Act a special protection against certain sales outside the market is afforded by s. 13 of the Markets and Fairs Clauses Act, 1847 (see App. I., *post*, Vol .II. for this Act and the numerous cases decided thereunder).

An action for disturbance of a market created by virtue of a statute will lie as in the case of an ancient franchise market (*Stevens* v. *Chown*, [1901] 1 Ch. 894 ; 65 J. P. 470 ; *Mayor, &c. of Birmingham* v. *Foster* (1894), 70 L. T. 371 ; *Hailsham Cattle Market Co.* v. *Tonman*, [1915] 2 Ch. 1 ; 79 J. P. 420 (where the action failed because on the facts it was held that on a true construction of the market Act there had been no disturbance) ; *Manchester* (*Mayor, etc. of*) v. *Lyons* (1882), 22 Ch. D. 287). In the last-mentioned case the corporation brought an action to restrain the defendants from selling eggs and dried fish on market days in their shop. The shop was situate in a street which adjoined one side of one of the plaintiff's markets, and on the opposite side of the street from, but not opposite to, the entrance from that street into the market. The defendants only sold their goods in their shops in the ordinary course of business. It was held that this was no disturbance of the statutory right of market.

The plaintiffs were, down to 1855, seised in fee of an ancient market for the sale of cattle, known as Smithfield market, and were entitled to certain tolls in respect of cattle exposed for sale therein. In 1855 the Smithfield market was by statute removed to Islington ; but all privileges were expressly preserved to the plaintiffs, and it was enacted that no new market for the sale of cattle should be opened within a distance of seven miles from St. Paul's Cathedral. One of the defendants became, in 1854, lessee of certain premises about 600 yards from the Islington market and within seven miles from St. Paul's, and converted them into lairs and receptacles for cattle, containing accommodation for about 400 head. Some of the cattle were from time to time sold by the defendants upon the premises between the market days, which were held on Mondays and Thursdays. Beyond a uniform charge for lairage, there was nothing in the nature of a toll upon sales effected by other persons than the defendants ; but when the defendants themselves acted as salesmen they charged the same commission as if the cattle had been sold in the plaintiffs' market. The cattle thus sold in the interval between the two markets would, if there had been no opportunity for sale between the two markets, have found their way to, and have been sold in, the plaintiffs' market:—*Held*, that an action was maintainable against the defendants for a disturbance of the plaintiffs' market (*London* (*Mayor, etc. of*) v. *Low* (1880), 49 L. J. Q. B. 144 ; 44 J. P. 169).

In boroughs, the limits of which for the purposes of parliamentary representation have been fixed by 2 & 3 Will. 4, c. 64, s. 35, Sched. O., and which are included in s. 1 of Sched. A. or of Sched. B. to 5 & 6 Will. 4, c. 76, s. 7, all places within the limits so fixed are, by s. 8 of the latter Act, parts of the borough for all purposes ; and an ancient borough market may be lawfully held within such limits, although outside the limits of the old municipal borough (*Dorchester* (*Mayor, etc. of*) v. *Ensor* (1869), L. R. 4 Ex. 335 ; 34 J. P. 167). A market held in the same town with an old market, if held upon the same day, is a disturbance by intendment of law ;

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but if it is held on a different day it is only evidence of disturbance for the jury (*ibid.*). To support an action for disturbance of a market, it is not necessary that the defendant should have actually sold; any active interference by him in the conduct of the new market, or participation in its profits or risk, is sufficient (*ibid.*). As to the granting of an interlocutory injunction in such a case, see *Elwes* v. *Payne* (1879), 12 Ch. D. 468.

A charter of Edw. 3 by the King and Parliament purported to give to the citizens of London and their successors exclusive right of market in a certain area. The charter was not included in the statute roll, but was in the charter roll. A charter of Car. 2 granted to G. and his heirs an exclusive right of market for fruit and vegetables within part of the above area, and this market has been enjoyed ever since. The G. E. Railway Company set up a rival fruit market within a quarter of a mile of the latter market, on the ground that G.'s market was overcrowded. It was held (1) that the charter of Edw. 3 had the force of a private Act, and amounted to a grant of market to the corporation; (2) that the corporation was entitled to waive any of its rights of market; (3) that G.'s market had by such implied waiver become a legal market; and (4) that G.'s market right had been disturbed by the company's market, and that overcrowding was no defence for the disturbance created by setting up a rival market (*G. E. Rail. Co.* v. *Goldsmid* (1884), 9 App. Cas. 927; 49 J. P. 260). Nor will the unlawful removal of a market or an unlawful change of days justify the wrongful erection of a rival market (*Midleton* v. *Power* (1886), 19 L. R. Ir. 1).

In addition to the above cases as to the right of action for disturbance of a market, the following may be referred to: *Prince* v. *Lewis* (1826), 5 B. & C. 363; *In re Islington Market Bill* (1835), 3 Cl. & F. 513; *Holcroft* v. *Heel* (1799), 1 B. & P. 400; *Mosley* v. *Chadwick* (1782), 7 B. & C. 47 n.; *Macclesfield* (*Mayor of*) v. *Pedley* (1833), 4 B. & Ad. 397; *Brecon* (*Mayor of*) v. *Edwards* (1862), 31 L. J. Ex. 368; 26 J. P. 614; *Brigland* v. *Shapter* (1839), 5 M. & W. 375; *Yard* v. *Ford* (1670), 2 Wm. Saund. 171; *Horner* v. *Freeman*, W. N. (1884), p. 223; *Midleton* v. *Power*, *supra*; *Downshire* v. *O'Brien* (1886), 19 L. R. Ir. 380; *Abergavenny Improvement Commissioners* v. *Straker* (1889), 53 J. P. 421; 60 L. T. 756; *Birmingham* (*Mayor, etc. of*) v. *Foster* (1894), 70 L. T. 371; 10 T. L. R. 309; *Stevens* v. *Chown*, [1901] 1 Ch. 894; *Wilcox* v. *Steel*, [1904] 1 Ch. 212; 68 J. P. 146; *Haynes* v. *Ford*, [1911] 2 Ch. 237; 75 J. P. 401; *Morpeth Corporation* v. *Northumberland Farmers' Auction Mart Co.*, [1921] 2 Ch. 154; 90 L. J. Ch. 420, and many other cases referred to in the article "Markets and Fairs" in the Encyclopædia of Local Government Law, Vol. IV. As to the powers of local authorities in the metropolis to erect posts, etc., so as to interfere with the use of a market, see 18 & 19 Vict. c. 120, ss. 91, 108, and *Horner* v. *Whitechapel District Board of Works* (1885), 55 L. J. Ch. 148; 53 L. T. 842.

Weighing machines.

(*d*) Except in connection with a market or depôt a council have no power under this Act to provide a weighing machine or weigh-house, or to incur expense in connection therewith. This view was taken by the L. G. B. in a case which came before them. See, however, the Locomotives Act, 1898, s. 4.

(*e*) See note (*c*), *supra*, and the next section, note (*d*).

Saving for private rights, etc.

(*f*) The right referred to in the text means a right acquired adversely to the world and peculiar to the individual. The establishment of a business with the consent of a local board does not give a right, power or privilege within the meaning of this priviso, if the business consists of sales which are contrary to the incorporated s. 13 of the Markets and Fairs Clauses Act (App. I., *post*, Vol. II. as not being within the person's own shop within the meaning of that section (*Fearon* v. *Mitchell* (1872), L. R. 7 Q. B. 690; 36 J. P. 804). See also *Woolwich Borough Council* v. *Gibson* (1905), 69 J. P. 361; 92 L. T. 538, where the words "rights, powers and privileges" were again construed as not extending to a right which an individual enjoys only in common with the rest of the public.

The appellant, a cattle salesman, occupied premises which he used for the sale of cattle under leases containing covenants for quiet enjoyment, granted by the corporation of a borough. Afterwards the corporation as the urban authority established a cattle market in the borough and published a list of the tolls. The appellant was convicted of selling cattle for which no toll had been paid in his sale-yard within the borough but not within the limits of the market. It was held

that the corporation had not derogated from their grant by establishing a market; that the appellant had not by virtue of the leases acquired any right to sell cattle within the meaning of the above section, which the urban authority could not interfere with by establishing a market (*Spurling* v. *Bantoft*, [1891] 2 Q. B. 384; 56 J. P. 135). See also *Ellis* v. *Bridgnorth* (*Corporation of*), *ante*, p. 381. Note to Section 166.

(*g*) It is conceived that there may be "rights enjoyed within the district" in respect of a market which is held at a spot outside the district, but near to it; for the district or some part of it may lie within the area over which the market owner has an exclusive privilege of setting up markets or a power of suppressing rival markets.

(*h*) See the definition of this word in s. 4, *ante*, p. 6, and see s. 168, *post*, p. 389.

167. For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847 (*a*), in so far as the same relate to markets, that is to say, Incorporation of provisions of 10 & 11 Vict. c. 14, as to markets.

With respect to the holding of the market or fair, and the protection thereof (*b*); and

With respect to the weighing goods and carts (*c*); and

With respect to the stallages, rents and tolls (*d*):

Provided that all tolls leviable by an urban authority in pursuance of this section (*e*) shall be approved by the Local Government Board (*d*).

An urban authority may with respect to any market belonging to them make byelaws (*f*) for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and printed copies of any byelaws so made shall be conspicuously exhibited in the market (*g*).

See notes to previous section. This section will apply to a rural authority who provide or regulate a market under the P. H. A., 1908, *post*.

(*a*) That is, 10 & 11 Vict. c. 14. See App. I., *post*, Vol. II., for the sections and notes thereto. The references in this section are to the headings in that statute, and do not, as is explained on p. 377, *ante*, lead to any inference as to the power to hold a *fair*. Incorporated provisions.

(*b*) Sections 12—16. It may be here observed that 27 Hen. 6, c. 5, prohibited markets from being held on Sundays, Ascension Day, Corpus Christi Day, Assumption Day, All Saints' Day, and Good Friday, and this prohibition has not been removed. The days upon which a charter market may be lawfully held are generally fixed by the express terms of the grant, and if the days for holding the market are unlawfully changed, the Crown may proceed against the owner by *scire facias* to obtain a repeal of the charter, or may proceed by information in the nature of a *quo warranto*. See *Att.-Gen.* v. *Horner* (1884), 14 Q. B. D. 245; 49 J. P. 326. After long usage it may be inferred that a change or addition of days has been allowed by a later licence from the Crown, subsequently mislaid (*Mayor, etc. of Penryn* v. *Best* (1878), 3 Ex. D. 292; *Midleton* v. *Power* (1886), 19 L. R. Ir., at p. 12; *Mayor, etc. of Manchester* v. *Lyons* (1882), 22 Ch. D., at p. 300; but see *Att.-Gen.* v. *Horner*, on p. 380, *ante*). In the case of markets established under the Public Health Act, any or every week-day can, by means of a byelaw made in pursuance of the power conferred by s. 14 of the Markets and Fairs Clauses Act, 1847, be made a market day. Holding of market, etc.

(*c*) Sections 21—30. And as to weighing of cattle, see the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891, in App. I., *post*, Vol. II. Weighing goods, cattle, etc.

(*d*) Nice questions have often arisen in connection with franchise markets as to the distinction between toll and stallage; but, broadly speaking, toll is a sum payable upon a sale in the market, while stallage is a sum payable in respect of the exclusive occupation of a portion of the soil (see *Northampton* (*Mayor of*) v. *Ward* (1745), 2 Stra. 1238, and *Swindon Central Market Co., Ltd.* v. *Panting* (1872), 27 L. T. 578). Rent for space in the market is only another name for stallage, though. Tolls; stallage; piccage, etc.

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perhaps, it is more usually applied when the accommodation is of a more fixed and substantial character than a movable stall, or when the hiring is for a more extended period, as for a week, month, or longer (Final Report on Market Rights and Tolls, 1890, p. 47). Stallage is, if the soil be broken, sometimes called piccage.

A right to toll is not incident to a market or fair, but is an independent right, which must be based upon a special grant or prescription or a statutory enactment (2 Inst. 220; *Holloway* v. *Smith* (1743), 2 Stra. 1171; *Austin* v. *Whittred* (1747), Willes, 623; *Mayor, etc. of Stamford* v. *Pawlett* (1830), 1 Cr. & J. 57; *Earl of Egremont* v. *Saul* (1836), 6 A. & E. 924; *Newcastle* (*Duke of*) v. *Worksop U. D. C.*, [1902] 2 Ch. 145, 159).

If the grant does not specify the amount of the toll, it is construed as a grant of a reasonable toll (*R.* v. *Mayor, etc. of Maidenhead* (1620), Palmer, 76; *Mayor, etc. of Stamford* v. *Pawlett* (1830), 1 Cr. & J. 57, 400). Provided that he keeps within the limits of what is reasonable, the owner of the toll may from time to time vary the sum to be taken (*Lawrence* v. *Hitch* (1868), L. R. 3 Q. B. 521; *Att.-Gen.* v. *Horner*, [1913] 2 Ch. 140; 77 J. P. 257), and he is not bound to take the same toll from all persons alike (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, *supra*, where the reasoning in *Hungerford Market Co.* v. *City Steamboat Co.* (1860), 30 L. J. Q. B. 25; 3 L. T. 732, was applied). If he changes the day for the market without licence he cannot recover tolls in respect of the changed day (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, *supra*).

Apart from some prescriptive or customary variation of the rule, market tolls (not being in the nature of stallage or piccage) are payable by the buyer and not by the seller (*Att.-Gen.* v. *Horner*, *supra*); but any individual seller may agree with the owner of the market that his goods shall be sold toll free, and that in return he will pay a sum equivalent to the amount of tolls properly payable by the buyers (*ibid.*). In the same case it was held in the court of first instance that the defendant was not justified in taking tolls on goods sold by sample without the bulk of the goods being brought into the market, or on goods brought into the market for sale and not sold (though stallage might be charged for those exposed for sale), and that the sums charged upon sales by auction were not tolls at all, but payment for services rendered by the defendant in permitting and facilitating the auction.

For a successful attempt to recover tolls wrongfully demanded, but paid under protest, in past years, see *Maskell* v. *Horner*, [1915] 3 K. B. 106; 79 J. P. 406.

A claim to stallage does not need the support of a grant from the Crown or of a special contract with the stall-holder (*Mayor, etc. of Northampton* v. *Ward*, *supra*; *Mayor, etc. of Newport* v. *Saunders* (1832), 3 B. & Ad. 411). In order, however, to support the claim there must be some exclusive occupation of a portion of the soil. Therefore, where a person used a market with a chair and a "ped," that is, a wooden or wicker basket, four feet long, two and a-half feet wide, and two feet high, with a lid, which, being turned back and supported by pieces of wood *not fixed in the soil*, formed a table on which he exposed provisions for sale, it was held he was liable for stallage (*Yarmouth* (*Mayor, etc. of*) v. *Groom* (1862), 32 L. J. Ex. 74; 7 L. T. 161; see also *R.* v. *Casswell* (1872), L. R. 7 Q. B. 328; 36 J. P. 645). But stallage is not payable, at common law, by reason merely that goods are rested in baskets or sacks or other convenient modes upon the ground (*Townsend* v. *Woodruff* (1850), 5 Ex. 506), or that cattle stand or loiter about the market place (*Swindon Central Market Co.* v. *Panting*, *supra*). It is a question of fact whether there has been such an exclusive occupation of a part of the soil as will support a claim to stallage; and the true test is, has there been any occupation beyond what the general public has (*R.* v. *Bedford* (*Duke of*) (1881), 45 L. T. 616, *per* BOWEN, J.).

The amount payable as stallage may be fixed, or made uniform by custom or prescription (*Bennington* v. *Taylor* (1701), 2 Lutw. 1517; *Free Fishers of Whitstable* v. *Gann* (1863), 13 C. B. (N.S.), at p. 860); but in all cases the charge must be a reasonable one (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, *supra*; *R.* v. *Burdett* (1697), 1 Ld. Raym. 149). The occupier of the stall, and not the salesman whom he employs, is the person liable to pay it (*Att.-Gen.* v. *Tynemouth Corporation* (1900), 17 T. L. R. 77).

Stallages may be charged at different rates for different places in the market (*Bedford* (*Duke of*) v. *Emmett* (1820), 3 B. & A. 366), and at different rates on different days of the year (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, *supra*).

Note to Section 167.

Reference has already been made at p. 379, *supra*, to the power of a council, after purchasing a franchise market with franchise tolls, to levy these tolls without first obtaining the approval of the M. of H. and also to the position of a council when seeking to alter such tolls.

In the case of a market which has been established under the P. H. A., 1875, or the L. G. A., 1858, the position of a council with regard to stallages, rents, and tolls appears to be as follows: All tolls proposed to be levied must be submitted to the M. of H. for approval, and when the approval has been obtained, but not before, they may be levied. No approval is required for stallages and rents (*cf. Att.-Gen.* v. *Tynemouth Corporation* (1900), 17 T. L. R. 77). These are, in fact, matters for special bargains. No one need rent the stalls and places in the market; but all persons having goods for sale must frequent the market, and they as well as the buyers must be protected from unreasonable tolls. Tolls are levied on the sale of articles, and on the weighing and measuring of goods, and on the weighing of carts, and now also of cattle under the Acts referred to in note (*c*), *supra*. In view of the fact that the distinction between toll and stallage is not always clear, it is perhaps wise to submit for the approval of the M. of H. every charge which it is proposed to make in connection with a market established under the Act. In *Att.-Gen.* v. *Tynemouth Corporation*, *supra*, it was held that a charge imposed upon fish salesmen, for leave to sell in berths of which they had no exclusive occupation, was not stallage or rent, and could not be enforced as a toll without first obtaining the consent of the L. G. B.

The provisions of the Markets and Fairs Clauses Act, 1847, with respect to stallages, rents and tolls are contained in ss. 31—41 (see the Act in App. I., *post*, Vol. II.). It will be found that these sections make specific provisions as to some of the matters discussed *supra* in relation to franchise tolls and stallages, *e.g.*, changes and recovery of stallages, rents and tolls.

As to markets provided under the Diseases of Animals Act, 1894, it is provided by s. 32 (4) of that Act that a local authority may charge such sums as may be imposed by their byelaws. *Inter alia*, ss. 31—41 of the Markets and Fairs Clauses Act, 1847, are incorporated with the Act of 1894 by s. 32 (3) thereof, and by s. 32 (4) the sums charged for the use of the wharf or other place, which is a market, are to be deemed to be "tolls authorised by the special Act." The byelaws imposing the tolls have by s. 32 (3) to be approved by the Board (now Ministry) of Agriculture and Fisheries. See also s. 32 (7) of the Act as to reduction of tolls.

(*e*) This should have been the "preceding" section (*i.e.*, s. 166).

Market byelaws.

(*f*) Note that byelaws can only be made with regard to a market belonging to a local authority. As to the making, confirming, and publishing of byelaws, see ss. 182—185, *post*, p. 432. There is an addition in this section to the provisions as to publication. Section 251, *post*, provides for the enforcing of the byelaws. It will be observed that there is no reference here to *fairs*. A byelaw for the regulation of a market, setting apart different places for the carrying on of wholesale and retail trades, is not unreasonable as being in restraint of trade (*Strike* v. *Collins* (1886), 50 J. P. 196; 34 W. R. 459). A byelaw making a reasonable reservation of a part of the market-place for the sale of particular articles and prohibiting the sale of other articles in the part so reserved has been held valid (*Savage* v. *Brook* (1863), 33 L. J. M. C. 42; 9 L. T. 334). So, too, have the following byelaws: A byelaw providing that certain sale-rings in the market should be used only for public sales by auction on conditions of sale equally applicable to all bidders, and prohibiting their use for private sales, or for sales to any limited number of persons, or for sales in which any class of the public should be excluded from bidding (*Scott* v. *Glasgow Corporation*, [1899] A. C. 470; 64 J. P. 132); a byelaw prohibiting sales of cattle by auction in the market-place before a particular hour (*Collins* v. *Corporation of Wells* (1885), 1 T. L. R. 328). Where the effect of a byelaw was entirely to prohibit the introduction into the market-place, without the officials' leave, of a class of articles which came within the classes for which the market had been established, it was held that the byelaw was invalid as a general restraint of trade (*Wortley* v. *Nottingham L. B.* (1870), 21 L. T. 582: see also *Gingell, Son and Foskett, Ltd.* v. *Stepney Borough Council*, *ante*, p. 381).

Model byelaws were issued by the L. G. B. under this section. In a memorandum prefixed to the model the Board remark as follows: "Section 42 of the Markets and Fairs Clauses Act, 1847 (10 Vict. c. 14), is in the following terms:

Note to Section 167.

"'The undertakers [urban authority] may from time to time make such byelaws as they think fit for all or any of the following purposes; (that is to say),

"'(1) For regulating the use of the market place, . . . and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

"'(2) For fixing the days and the hours during each day on which the market . . . shall be held:

"'(3) For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein:

"'(4) For regulating the carriers resorting to the market, . . . and fixing the rates for carrying articles carried therefrom within the limits of the special Act:

"'(5) For regulating the use of the weighing machines provided by the undertakers [urban authority], and for preventing the use of false or defective weights, scales or measures.

"'(6) For preventing the sale or exposure for sale of unwholesome provisions in the market, . . .'

"Of the above-mentioned purposes the Board think that to those enumerated in the first, second, and fourth paragraphs of section 42 of 10 Vict. c. 14, byelaws may be generally rendered applicable. They anticipate that some difficulty will be experienced in any attempt to make byelaws with regard to the purposes specified in the third, fifth, and sixth paragraphs. The slaughter-houses as to which byelaws are authorised by the third paragraph are apparently the slaughter-houses to which sections 17—20 of 10 Vict. c. 14 relate. Those sections, however, have not been incorporated with the Public Health Act, 1875, and where, under section 169 of that Act, the urban authority exercise their power of providing slaughter-houses, any byelaws which may be required should be made under the last-mentioned enactment.

"On reference to the clauses (21 to 30) of 10 Vict. c. 14, with respect to weighing goods and carts, it will be seen that the statute itself provides very fully for the regulation of the use of the weighing machines.

"The Board are disposed to think that the practical advantage which may be anticipated from the endeavour to supplement these provisions by byelaws under the fifth paragraph of section 42 will hardly compensate for the possible complications which may arise out of any conflict between the regulations prescribed by the byelaws and those imposed by the express terms of the statute.

"Again, for the prevention of the use of false or defective weights, scales, or measures, there appears to be ample provision both in 10 Vict. c. 14 and in other statutes. By section 21 of 10 Vict. c. 14, the urban authority are required to keep in the weighing houses or places proper weights, scales, and measures, according to the standard weights and measures for the time being, for weighing the commodities sold in the market place. The urban authority are also required by section 24 to keep machines and weights for the purpose of weighing carts in which goods are brought for sale. The use of all these machines, weights, scales, and measures, will be under the control of persons appointed by the urban authority. Buyers may insist upon articles offered for sale being weighed or measured by the weights and scales, or measures, of the urban authority, and generally it appears that 10 Vict. c. 14 provides adequate security against the fraudulent practices which byelaws under the fifth paragraph of section 42 might be intended to check.

"The sixth paragraph authorises byelaws for preventing the sale or exposure for sale of unwholesome provisions in the market. Having regard, however, to section 15 of 10 Vict. c. 14, incorporated with 38 & 39 Vict. c. 55, by section 167, and to the stringent provisions of sections 116—119 of the latter statute, the Board think that byelaws upon this subject will be unnecessary.

"It should be observed that section 167 of 38 & 39 Vict. c. 55, provides that all tolls leviable by an urban authority shall be approved by the Local Government Board. Their approval, however, is not required in the case of stallages and rents." The M. of H. must of course now be substituted throughout for the L. G. B.

Byelaws for a market provided under the Diseases of Animals Act, 1894, may be made by the local authority (as to which term see note on p. 378) providing it (*Scott* v. *Glasgow Corporation*, *ante*, p. 387). Section 32 (2) of the Act incorporates ss. 42—49 of the Markets and Fairs Clauses Act, 1847, which are the sections with respect to byelaws ; and s. 32 (3) provides that byelaws shall be approved by the Board (now Ministry) of Agriculture and Fisheries, " which approval shall be sufficient without any other approval or allowance, notice of application for approval being given, and proposed byelaws being published before application, as required by " the Clauses Act. **Note to Section 167.**

(*g*) See, in s. 306, *post*, the penalty for injuring or defacing the boards on which the byelaws are inscribed.

168. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act, 1862 (*a*), of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths (*b*) in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell (*c*) and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights powers (*d*) and privileges and all or any of the markets premises and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase. Power for sale of undertaking of market company to urban authority.

This section will apply to a rural authority providing a market under the P. H. A., 1908, *post*.

(*a*) See now the Companies (Consolidation) Act, 1908.

(*b*) In 21 & 22 Vict. c. 98, s. 53, it was three-fifths.

(*c*) The power of sale, as it seems, overrides any provisions which may be contained in any local Act applicable to the markets which provided for the sale of it. A similar provision is contained in s. 63, *ante*, p. 139, as to water, and in s. 162, *ante*, p. 367, as to gas, except that the sanction of the M. of H. is not required for the purchase of the market. But if a loan be required for effecting the purpose, as the Ministry must sanction the loan, their approbation of the purchase must be obtained. The Ministry will require to be furnished with evidence that a resolution to sell the undertaking has been duly passed in accordance with the requirements of the section by the members of the market company. In such a case s. 168 has not the effect of giving a district council a power which can be exercised independently of procedure under s. 166, and the department is not likely to entertain applications for sanction to loans to defray the cost of purchase until the requisite proceedings under the latter section have been taken. If the company's rights extend to fairs the transaction must be limited to the transfer of the market and market rights, and to the purchase of such things as are strictly connected with the purposes of s. 166. See notes to that section..

(*d*) *Quære*, will this word carry all special statutory powers which are independent of the property in the market ? The affirmative appears to be the better opinion.

169. Any urban authority (*a*) may, if they think fit, provide slaughter-houses (*b*), and they shall make byelaws (*c*) with respect to the management and charges for the use of any slaughter-houses so provided. Power to provide slaughter-houses.

For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement

Section 169. Clauses Act, 1847 (*d*), with respect to slaughter-houses shall be incorporated with this Act.

Nothing in this section shall prejudice or affect any rights powers or privileges of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848, for the purpose of making and maintaining slaughter-houses.

Rural districts.

(*a*) It will be observed that the provisions of ss. 169 and 170 with regard to slaughter-houses are applied by the Act to urban districts only, but if the circumstances of a rural district require that such powers should be put in force therein, it is competent to the rural district council to apply to the M. of H. for an order under s. 276 investing them with the powers. The Ministry are not often asked to declare the first paragraph of s. 169 to be operative in a rural district with the object of enabling a rural district council to *provide* public slaughter-houses, but there are numerous instances in which the remaining powers of the section, with the provisions of s. 170, and the supplemental powers of ss. 29—31 of the P. H. A., 1890, have been put in force either in whole rural districts or in specified rural parishes, in fact these powers are now readily granted. Any application for an order of this kind should be made by resolution of the council of which a copy should be forwarded to the Ministry by the clerk, with a short statement of the grounds upon which the application is made.

A question arises as to the interpretation to be placed upon the words "within three months after the passing of such Act" as used in s. 127 of the Act of 1847, in the case of an order of the M. of H. investing a rural district council with urban powers, and upon this depends the precise effect of the order upon slaughter-houses already existing. The words must be taken to refer to the date of the operation of the order. It will be observed that upon the operation of an urban powers order in a rural district, existing slaughter-houses have to be registered, but do not require to be licensed. Both classes may be regulated by byelaws. The Departmental Committee on Meat Inspection, in their report dated July 16th, 1921, stated as follows:—"We do not see any ground for continuing the present diversity of law affecting slaughter-houses and depending on whether the slaughter-house is in an urban or a rural district or on the date of its establishment."

(*b*) For the definition of a slaughter-house, see s. 4, *ante*, p. 34.

Effect of establishment of public slaughter-house.

On the question whether, upon the establishment of a public slaughter-house by an urban council, that council could refuse to sanction plans for the erection of private slaughter-houses the L. G. B. expressed themselves as follows: "Under s. 126 of the Towns Improvement Clauses Act, 1847, no place can be used or occupied as a slaughter-house in the urban district which was not in such use or occupation at the constitution of the district and has so continued ever since, unless and until a licence for the erection thereof or for the use and occupation thereof as a slaughter-house has been obtained from the urban district council. A penalty is imposed by the section for disobedience to the provision therein contained, and the section applies whether the urban district council provide a public slaughter-house or not. It would seem, therefore, that the urban district council can deal with the matter without obtaining any further powers."

In another case the Board stated that it seemed to them that the urban council had no power to revoke a licence in force in regard to a slaughter-house or to compel all the butchers in the district to use any public slaughter-house which might be provided. A licence granted can only be revoked by the justices under the circumstances provided for in s. 129 of the Act of 1847. Where, however, a licence is required for a slaughter-house by a person to whom one has not already been given in respect thereof it is competent to the urban council to consider whether the circumstances justify them in withholding a licence from such person. If the slaughter-house was used as such when s. 126 of the Act referred to was put in force in the district, of course no licence is required. At the same time the Board drew attention to s. 29 of the P. H. A., 1890, which, when in force, enables urban councils to grant licences for a limited period, and to s. 31 of that Act as to the power of justices to revoke a licence.

Note to Section 169.

In settling the design of a public slaughter-house regard should be had to a Circular issued by the L. G. B. as to the Humane Slaughtering of Animals, and to the recommendations on the subject put forward by a committee appointed by the Admiralty in 1904. See also note (*c*), *infra*.

Design of slaughter-house.

As regards the question of the power of a district council to provide a slaughter-house outside their district, it should be borne in mind that even if a slaughter-house could be established outside the district of the council with the licence of the local authority of the adjoining district (assuming that that district was urban or subject to urban powers) there would be practical inconveniences and a conflict of jurisdiction. The L. G. B. once declined to sanction a loan for a scheme of this kind.

Public slaughter-house outside district.

Income tax on receipts.

Under a local Act the dues and rents charged in respect of public slaughter-houses were to be regulated triennially so as to make the concern self-supporting, but not profit-earning. It was held that the slaughter-houses should be assessed for income tax purposes under r. 1 (and not r. 3) of Sched. A. (*Inland Revenue* v. *Edinburgh Magistrates*, [1907] S. C. 1233).

Byelaws.

(*c*) See note (*f*) to s. 167, *ante*, p. 387. A revised series of model byelaws was issued in 1914 by the L. G. B. in relation to slaughter-houses provided by private persons, and the suggestions contained therein, and in the prefixed memorandum, will be of great assistance to local authorities. In the memorandum the Board (after setting out the text of the incorporated enactment) remark as follows:

"In connection with these provisions, and those relating to the licensing and registration of slaughter-houses, in sections 125—127, the attention of the urban authority should be directed to the judgment of the Court of Exchequer Chamber in the case of *Anthony* v. *The Brecon Markets Company* (1872), 26 L. T. 982.

"With reference to that judgment, a few observations may here be introduced in illustration of the nature and extent of the powers of the urban authority with regard to slaughter-houses.

"It will be seen that the provisions of the Towns Improvement Clauses Act, 1847, incorporated with the P. H. A., 1875, by section 169 of the latter Act, recognise two classes of slaughter-houses, viz., slaughter-houses in use and occupation at the time of the passing of the 'special Act,' and slaughter-houses not in use and occupation at that time. To the former class the requirements as to registration in section 127 are specially applicable. To the latter class the provisions as to licensing in sections 125 and 126 have direct reference.

"Both classes may apparently be regulated by byelaws under section 128.

"In framing a model series of byelaws under that enactment, the Board have considered that the statutory terms do not warrant the extension of the scope of the byelaws to regulations directly affecting the structure of the premises.

"But as regards premises for which under section 126 the licence of the urban authority will be required, the Board have been advised that, in the exercise of the discretionary power of licensing which has been conferred upon the urban authority, the following rules as to site and structure should influence their decision upon each application for a licence:

"1. The premises to be erected or to be used and occupied as a slaughter-house should not be within 100 feet of any dwelling-house; and the site should be such as to admit of free ventilation by direct communication with the external air on two sides at least of the slaughter-house.

"2. Lairs for cattle in connection with the slaughter-house should not be within 100 feet of a dwelling-house.

"3. The slaughter-house should not in any part be below the surface of the adjoining ground.

"4. The approach to the slaughter-house should not be on an incline of more than one in four, and should not be through any dwelling-house or shop.

"5. No room or loft should be constructed over the slaughter-house.

"6. The slaughter-house should be provided with an adequate tank or other proper receptacle for water, so placed that the bottom shall not be less than six feet above the level of the floor of the slaughter-house.

"7. The slaughter-house should be provided with means of thorough ventilation.

"8. The slaughter-house should be well paved with asphalte or concrete, and laid with proper slope and channel towards a gulley, which should be properly

Note to Section 169.

trapped and covered with a grating, the bars of which should be not more more than three-eighths of an inch apart.

"Provision for the effectual drainage of the slaughter-house should also be made.

"9. The surface of the walls in the interior of the slaughter-house should be covered with hard, smooth, impervious material, to a sufficient height.

"10. No water-closet, privy, or cesspool should be constructed within the slaughter-house.

"There should be no direct communication between the slaughter-house, and any stable, water-closet, privy, or cesspool.

"11. Every lair for cattle in connection with the slaughter-house should be properly paved, drained, and ventilated.

"No habitable room should be constructed over any lair.

"It remains to call attention to two provisions contained in the P. H. A., 1890, which apply in cases where Part III. of that Act has been adopted by an urban authority:

"(a) Under section 29 the urban authority may limit the duration of licences granted, after the adoption of Part III. for the use and occupation of places as slaughter-houses so that such licences 'shall be in force for such time or times only, not being less than twelve months, as the urban authority shall think fit to specify in such licences.' Certain forms which are prescribed by the model clauses will be found to give effect to this provision.

"(b) Where a licence for the use and occupation of a slaughter-house is granted, after the adoption of Part III., the provisions of section 30 of that Act are required by sub-section (3) of that section to be endorsed on the licence. This enactment prescribes that upon any change of occupation of any building within an urban district registered or licensed for use and used as a slaughter-house, the person thereupon becoming the occupier or joint occupier shall give notice in writing of the change of occupation to the inspector of nuisances. A person failing or neglecting to give the notice becomes liable to a penalty. (Section 30 (2).)"

Slaughter-houses provided under a local Act.

In a case in which slaughter-houses had been provided by an urban council under the powers of a local Act the L. G. B. held that byelaws for their regulation could not be made under s. 169 of the P. H. A., 1875. The Board suggested, however, whether as owners of the slaughter-houses the council might not, by directions to their servants and regulations governing admission to the buildings, exercise a very effectual control in their management.

The Slaughter-houses, etc. (Metropolis) Act, 1874 (repealed by the P. H. (London) A., 1891), contained in terms no prohibition as to the manner in which the slaughter of cattle was to be performed, but enacted by s. 4 that the local authority might make byelaws regulating the conduct of any business specified in the Act. Byelaws so made (kept in force by s. 142 (2) (b) of the Act of 1891) prohibited the occupier of a slaughter-house from slaughtering or permitting to be slaughtered any animal contrary to certain regulations laid down in them:—*Held*, that the byelaws were not repugnant to the common law, and that upon breach of them by a servant the occupier was liable, although the offence was committed without his knowledge and contrary to his express order (*Collman* v. *Mills*, [1897] 1 Q. B. 396; 61 J. P. 102).

(*d*) The incorporated provisions of the Towns Improvement Clauses Act, 1847 (ss. 125—131), are printed in App. I., *post*, Vol. II., with notes. These provisions relate to the licensing and registration of slaughter-houses, the making of byelaws, etc. See also note (*c*) above.

Further powers are now obtainable in relation to the licensing of slaughter-houses under ss. 29—31 of the P. H. A., 1890. See that Act, *post*, and note (*c*) above.

See as to slaughter-houses in the metropolis, the P. H. (London) A., 1891, ss. 20, 141.

Slaughter-houses for horses and other cattle not intended for butchers' meat, are regulated by the Knackers Acts, 1786 and 1844, in App. I., *post*, Vol. II. (but the power to grant licences under those Acts is now transferred to district councils by the L. G. A., 1894, s. 27 (2), *post*), and the Protection of Animals Act, 1911, ss. 5, 6, Sched. I.

Note to Section 169.

The Markets and Fairs Clauses Act, 1847, ss. 17—20, contains provisions relating to slaughter-houses, but these apply only by virtue of a special Act. They are incorporated as regards a local authority under the Diseases of Animals Act, 1894, by s. 32, thereof, which enables such authority to provide landing places, etc. for the sale, slaughter, or disposal of foreign animals.

Notice to be affixed on slaughter-houses

170. The owner or occupier of any slaughter-house licensed or registered (*a*) under this Act shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction (*b*).

(*a*) The incorporated sections of the Towns Improvement Clauses Act, 1847, enable the urban authority to licence slaughter-houses newly established, and to register those which have been previously established. This section would appear to take effect as from 1875, but the same provision was contained in 37 & 38 Vict. c. 89, s. 49. It cannot, however, operate upon premises licensed or registered before this last Act. See note to preceding section as to the application of s. 170 to rural districts.

(*b*) As to the recovery of this penalty, see s. 251, *post*.

POLICE REGULATIONS.

Incorporation of certain provisions of 10 & 11 Vict. c. 89.

171. The provisions of the Town Police Clauses Act, 1847 (*a*), with respect to the following matters, (namely),

(1) With respect to obstructions and nuisances in the streets (*b*); and
(2) With respect to fires (*c*); and
(3) With respect to places of public resort (*d*); and
(4) With respect to hackney carriages (*e*); and
(5) With respect to public bathing (*f*);

shall, for the purpose of regulating such matters in urban districts (*g*), be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority (*h*); and the expression "within the prescribed distance" (*i*) shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated (*k*), a licence granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the licence, or until the next general licensing meeting where a day for such meeting is appointed.

(*a*) That is, 10 & 11 Vict. c. 89. In order to understand the incorporated clauses attention should be paid to other clauses in the Act, and consequently such as

Incorporated provisions.

Note to Section 171.

appear to be requisite are printed in App. I., *post*, Vol. II., in addition to the clauses actually incorporated. The sections dealing with the various matters specified in s. 171 are referred to in the following notes. The notes to the several sections in App. I., *post*, Vol. II., should also be referred to.

Obstructions, etc. in streets.

(*b*) See ss. 21—29 of the Act of 1847, in App. I., *post*, Vol. II. The provisions refer more to police control than to the actual powers of local authorities, and some of the offences mentioned therein are also dealt with in the Highway Act, 1835, s. 72. See also the provisions of ss. 3, 78—81 of the P. H. A., 1907, *post*.

Fires.

(*c*) See ss. 30—33 of the Act of 1847 in App. I., *post*, Vol. II. The urban authority derive from this paragraph their powers for the extinction of fires, the establishment of fire brigades, the erection of fire-engine stations, etc. Their duty in connection with the provision of an adequate water supply is laid down in s. 66, *ante*, p. **142**. See also the Parish Fire Engines Act, 1898, *post*, and ss. 3 and 90 of the P. H. A., 1907, *post*.

Places of public resort.

(*d*) See ss. 34—36 of the Act of 1847, in App. I., *post*, Vol. II.

Hackney carriages.

(*e*) See ss. 37—68 of the Act of 1847, in App. I., *post*, Vol. II. These provisions have been extended and applied to omnibuses, stage coaches, etc., by 52 & 53 Vict. c. 14, which is also set out in App. I., *post*, Vol. II. By s. 2 of that Act, it is to be deemed to be incorporated with the P. H. A., 1875, by the provisions in the text.

It will be seen that the incorporated clauses enable byelaws to be made in respect of hackney carriages; and the M. of H. have model byelaws on this subject. For decisions upon such byelaws, see notes to s. 68 of the Act of 1847, *post*, Vol. II.

Public bathing.

(*f*) See s. 69 of the Act of 1847, in App. I., *post*, Vol. II. On this subject also model byelaws are issued by the M. of H. As the marginal note to s. 69 of the Act of 1847 summarises the provisions of the section as relating to bathing machines, such byelaws are restricted to the regulation of public bathing in connection with the use of bathing machines. See, however, s. 92 of the P. H. A., 1907, which, when declared to be in force in a district, enables the council to make byelaws in regard to public bathing, whether from bathing machines or not, and other matters.

As to the conditions under which bathing from the shore without the use of a machine may become an indictable offence, the Board refer in the same preface to *R.* v. *Reed* (1871), 12 Cox C. C. 1, and *R.* v. *Crunden* (1809), 2 Camp. 89. See also ss. 3 and 82 of the P. H. A., 1907.

Rural districts.

(*g*) It will be observed that this section applies to urban districts only. If, however, a rural council are of opinion that the provisions, or some of them, should be put in force in their district or certain parishes therein, they may apply to the M. of H. for an order for the purpose under s. 276, *post*; or, the application may be made by ratepayers whose united hereditaments represent at least one-tenth of the rateable value of the district or parish, by the county council or by a parish council. See the L. G. A., 1894, s. 25 (7), *post*. A copy of the resolution authorising the application should be forwarded by the clerk, together with a short statement of grounds.

If the application relates to "obstructions, etc., in streets" such as are dealt with in s. 28 of the Act of 1847, the precise paragraphs of that section which are required should be specified, and in this connection the council might ascertain whether the offences in question are not already dealt with by the Highway Act, 1835, s. 72, which is in force in rural as well as urban districts. See also note (*b*), above.

If the application relates to "fires," it should be stated whether fire engines are to be provided by the rural district council, and if so, what parishes the engine or engines will serve. It should be borne in mind that parish councils also have powers for the provision of fire extinguishing plant under the L. G. A., 1894, s. 6, and in some cases under the Lighting and Watching Act, 1833, s. 44. Moreover, under the Parish Fire Engines Act, 1898, such councils are empowered to agree with the councils of neighbouring urban districts for the use of fire engines in their parish.

It is frequently possible for a rural council to arrange with the council of some borough or other urban district for the use of their engines and the services of the urban fire brigade. Such an arrangement, if of a binding and permanent character, may be considered as the providing of a fire engine by the rural council within the meaning of s. 32 of the Act of 1847. It is well to settle the terms of an agreement before applying to the M. of H. for the necessary urban powers, and it may be

observed here that an urban council cannot make an arrangement of this kind with a rural district council and retain their powers under s. 33 of the Act of 1847 of recovering expenses from owners outside their district. **Note to Section 171.**

See, however, the P. H. A., 1907, s. 90, as to agreements for use of fire engines, etc., in districts where that section is operative in pursuance of an Order of the Secretary of State. The official view seems to be that this section does not dispense with the necessity for urban powers in the case of a rural district council.

If the application relates to "hackney carriages," it should be stated whether it is desired to regulate omnibuses also (see note (*e*), *ante*, p. 394). So long as a rural district is not subject to an urban powers order hackney carriages are apparently not subject to any regulation. If the application relates to "public bathing," it it would be well to consider whether the powers of the Act of 1847 will be sufficient for the object in view. See note (*f*), *ante*, p. 394.

(*h*) By s. 28 of the Town Police Clauses Act, 1847, everyone who, to the annoyance and danger of the passengers, wantonly throws stones is liable to a penalty. By s. 171, *supra*, the provisions of the Town Police Clauses Act, 1847, with respect to the above, are incorporated "for the purpose of regulating such matters in urban districts." It is provided by s. 253, *post*, that "proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than a party aggrieved, or by the local authority of the district in which the offence is committed":—*Held*, that the district superintendent of police could lay an information under s. 28 of the Town Police Clauses Act, 1847, although not the party aggrieved nor authorised by the local authority (*Jobson* v. *Henderson* (1900), 64 J. P. 425; 82 L. T. 260). See also s. 253 and notes thereto, *post*. Who may prosecute.

(*i*) The last interpretation removed a difficulty which was often felt in respect of "the prescribed distance," and prevents the inconvenience resulting from the contiguity of local districts. "Prescribed distance."

(*k*) This enactment removed an impression which prevailed generally, though whether correctly or not may be doubted, that though the owner of a carriage was to be licensed for a year only, a driver when once licensed retained his licence during the rest of his life. Drivers' licences.

172. Any urban authority (*a*) may licence the proprietors drivers and conductors of horses ponies mules or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages (*b*), and may make byelaws (*c*) for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge. Urban authority may make byelaws for licensing horses, boats, etc. for hire.

Any urban authority (*a*) may also licence the proprietors of pleasure boats and vessels (*d*), and the boatmen or other persons in charge thereof, and may make byelaws (*d*) for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge.

(*a*) If a rural council consider it desirable to possess the powers of this section, they should apply to the M. of H. for an Order under s. 276, *post*. A copy of their resolution should be forwarded by the clerk, with a statement of the grounds for the application and of the names of the contributory places concerned. Such powers will presumably only be required for populous places, or places to which numbers of visitors resort. Rural districts.

(*b*) See previous section and note (*c*) thereto. Having regard to ss. 39 and 46 of the Town Police Clauses Act, 1847, which is applied to these licences by the provision in the text it is suggested that for such licences fees may be charged not exceeding the fees authorised by those sections. Licences.

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(*c*) As to the making, confirming, and publishing of byelaws, see ss. 182—186, *post*, pp. 432—445, and as to the enforcing of them, see s. 251, *post*.

Byelaws.

Model byelaws under this section were issued by the L. G. B. From the memorandum prefixed to these, the following practical remarks are taken: "It should be noticed that the effect of sections 46 and 47 of the 10 & 11 Vict. c. 89, as applied to the case of a driver or conductor of a horse, pony, mule, or ass standing for hire, is to require every such driver or conductor to obtain a licence from the urban authority, and to render liable to a penalty any person who acts as a driver or conductor without having obtained such licence, or during the time that his licence is suspended, or who lends or parts with his licence except to the proprietor of the horse, pony, mule, or ass. The proprietor will also be liable to a penalty if he employ any person as a driver or conductor who has not obtained a licence, or during the time that his licence is suspended. The 10 & 11 Vict. c. 89, s. 50, empowers the urban authority, upon a conviction for the second time for any such offence as is therein mentioned, to suspend or revoke the licence; and, in accordance with the provision in the last paragraph of s. 171 of the 38 & 39 Vict. c. 55, the licence granted to a driver or conductor will be in force for one year only from the date of the licence, or until the next general licensing meeting, where a day for such meeting is appointed. Although the 38 & 39 Vict. c. 55, s. 172, specifies the qualification of drivers and conductors as one of the subjects which may be regulated by byelaws, the Board have deemed it unnecessary to include in the model series any clause with respect to this matter. It will be within the discretion of the urban authority to grant or refuse a licence; and before deciding upon any application they will doubtless satisfy themselves as to the qualification of the applicant for employment as a driver or conductor. A licence from the urban authority is a qualification which the statutory provisions above noticed recognise as indispensable in the case of every person who acts as a driver or conductor." It would not apparently be feasible to provide in the byelaws under this section for such matters as the wearing of badges by drivers, the limitation of the number of licences, or the accompanying of juvenile riders.

(*d*) Model byelaws have also been issued with reference to pleasure boats and vessels. The memorandum attached to this series is deserving of careful perusal, but it is too long for insertion here. It is there pointed out that there is not in the text any express provision as to the conditions under which a licence may be granted or refused or as to its duration or revocation. These are said to be matters as to which the urban authority may adopt such rules as they may deem most expedient. Certain requirements are indicated which ought to be regarded as indispensable, such as the soundness and stability of the boat or vessel, etc., and the power to revoke the licence on notice. A licence may be so framed as to specify the maximum number of persons to be carried in each boat.

The powers of local authorities for the licensing of pleasure boats have been largely extended by the P. H. A., 1907, s. 94, but that section must first be put in force in the particular district by Order of the M. of H. See notes thereto, *post*.

The vessels referred to in the text appear to be vessels used for pleasure, *e.g.*, yachts, and are not such as are used for passenger traffic, which are to be dealt with under the Merchant Shipping Acts, where the Board of Trade provides for the qualification of the officers. Thus, a ferry would not ordinarily come under the section. There seems, however, to be no authoritative decision as to the meaning of the expression "pleasure boats and vessels" as used in this Act.

This section does not authorise the making of a byelaw that proprietors of boats (not themselves acting as boatmen) must take out a licence, nor can the council of a borough make such a byelaw under the Municipal Corporations Act, 1882, s. 23; such a byelaw, therefore, is *ultra vires* and bad, and an information purporting to be laid under such a byelaw was held to have been rightly dismissed (*Byrne* v. *Brown* (1893), 57 J. P. 741 n). A similar decision was arrived at under the words of a local Act in *Londonderry Harbour Commissioners* v. *Londonderry Bridge Commissioners*, [1894] 2 I. R. 384.

As to boats on lakes or waters in any park or pleasure ground provided by the local authority, see the P. H. A., 1890, s. 44 (2), *post*.

PART V.

GENERAL PROVISIONS.

CONTRACTS.

173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

Power of local authorities to contract.

This section does not legally preclude the authority from themselves carrying out works. The question of the expediency of so doing is one for their decision.

Contracts generally.

Contracts must be entered into by the authorities themselves: the power cannot be delegated to a committee; see s. 200 and note (*a*) to next section.

The M. of H. hold that a contract for the execution of works to be paid for by instalments spread over a term of years is a proceeding which is not recognised by the Act, and that the proper course is to borrow the money with the Ministry's sanction under ss. 233 and 234. See also s. 210.

As to a contract for the insurance of the property of a local authority, see *Municipal Mutual Insurance, Ltd.* v. *Pontefract Corporation* (1917), 116 L. T. 671; 15 L. G. R. 299.

As to contracts for the supply of goods, see *Percival* v. *London C. C Asylums Committee*, *post*, p. 411.

In making contracts an authority should bear in mind the provisions of the Trade Boards Act, 1909, as to minimum rates of wages in certain trades. See a circular of the L. G. B. dated July 29th, 1910. The Board also urged that in all contracts for work or materials, local authorities would adopt the standard Government "fair wages" clause. See their circular dated September 2nd, 1911.

174. With respect to contracts made by an urban (*a*) authority under this Act (*aa*), the following regulations shall be observed; (namely,)

Provisions as to contracts by urban authority.

(1) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority (*b*):

(2) Every such contract shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed (*d*):

(3) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise (*e*):

(4) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same (*f*):

(5) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by

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whom the same is executed and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes: Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

(*a*) This section applies only to contracts made by urban authorities, and only to contracts made by them when acting under this Act (see next note). Contracts with rural district councils, and with urban councils when not acting under this Act, are regulated by the ordinary law relating to corporate bodies, which was thus stated by Lord COLERIDGE, C.J., in *Austin* v. *Bethnal Green* (*Guardians of*) (1874), L. R. 9 C. P. 91; 38 J. P. 248: "The rule of law is clear, that primâ facie and for general purposes a corporation can only contract under seal, for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been grafted. The principle that governs these exceptions is conveniently stated in the case of *Church* v. *Imperial Gas Light Co.* (1838), 6 A. & E. 846, at p. 861, by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *Ludlow* (*Mayor of*) v. *Charlton* (1840), 6 M. & W. 815, at p. 822. It is there stated that wherever to hold the rule applicable, would occasion very great inconvenience or tend to defeat the very object for which the corporation was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions." These two exceptions to the general rule (*i.e.*, trivial matters and matters of frequent occurrence) have ever since been recognised; and after a conflict of authority extending over many years, a third exception has now been established as follows: Where (1) the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry those purposes into effect, and (2) orders are given by the corporation for work or goods to carry into effect such purposes, and (3) the work or goods are accepted by the corporation, and the whole consideration for payment is executed, then the absence of a contract under seal is no answer to an action brought in respect of the work done or goods supplied (*Lawford* v. *Billericay R. D. C.*, [1903] 1 K. B. 772; 67 J. P. 245). In *Hodge* v. *Matlock Bath U. D. C.* (1911), 75 J. P. 65; 27 T. L. R. 129, an urban council, who were building a kursaal under a private Act, by resolution employed the plaintiff as architect. There was no contract under seal. After he had done some of the work, he was dismissed. In an action for damages for breach of contract, and, alternatively, on a *quantum meruit*, it was held, following *Lawford* v. *Billericay R. D. C.*, *supra*, that the council having received the benefit of the work, were liable to the plaintiff on a *quantum meruit*. Incidentally it was held that the jury could not, on the claim for a *quantum meruit*, award a sum exceeding that claimed by the plaintiff's particulars in the absence of evidence by him that the amount so claimed was inadequate. The principle of *Lawford* v. *Billericay*, *supra*, was also applied in a case where there was an agreement under seal which was, however, rescinded upon the ground that it was entered into by the plaintiff under a mistake innocently induced by the defendants by correspondence prior to the making of the agreement and the plaintiffs' remuneration was thereupon assessed on the footing of a *quantum meruit*. See *Faraday* v. *Tamworth Union* (1917), 81 J. P. 81; 15 L. G. R. 258. See also *Bourne and Hollingsworth* v. *Marylebone Borough Council*, [1908] W. N. 52; 72 J. P. 129; reversed, [1909] W. N. 14; 72 J. P. 306.

Contracts of corporate bodies apart from statutory provisions: when sealing required.

Austin v. *Bethnal Green* (*Guardians of*) and *Ludlow* v. *Charlton*, *supra*, illustrate the first two exceptions to the general rule as to contracts of corporations; but the actual decisions in those cases, so far as they conflict with the third exception established in *Lawford* v. *Billericay R. D. C.*, *supra*, must now be disregarded; so too, to the same extent, must the decisions in the following cases: *Paine* v. *Strand Union* (*Guardians of*), *infra*; *Lamprell* v. *Billericay Union*, *infra*; *Smart* v. *West*

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Ham Guardians, infra ; Phelps v. *Upton Snodsbury Highway Board, infra ;* and *Stevens* v. *Hounslow Burial Board, infra.* It was held that guardians could not bind themselves by an order, not under seal, for making a survey and map of the rateable property in a parish, such order not being a contract necessarily incident to the purposes for which they were incorporated (*Paine* v. *Strand Union* (*Guardians of*) (1846), 8 Q. B. 326). Where guardians gave a verbal order for iron gates for the workhouse, and the gates were supplied, it was held that there was a contract incident to the purposes for which they were incorporated (*Saunders* v. *St. Neots Union* (*Guardians of*) (1846), 8 Q. B. 810). In *Lamprell* v. *Billericay Union* (1849), 3 Ex. 283, it was held that a builder who had erected works, in addition to those specified in a sealed contract, was not entitled to recover on a *quantum meruit*, as the defendants were incapable of making a new parol contract of that description. When at a meeting of guardians a contract not under seal was entered into for the erecting of water-closets in the workhouse, and the closets were put up, it was held that the guardians were liable (*Clarke* v. *Cuckfield Union* (*Guardians of*) (1852), 21 L. J. Q. B. 349 ; 16 J. P. 257). Guardians suspecting fraud by their clerk in the union accounts employed the plaintiff to investigate them, and during the investigation, and after the appointment of a new clerk, also employed him to make up the accounts for the last half-year, which involved a fresh investigation by him of the old accounts. The plaintiff was employed under three several resolutions of the board entered in their minute book, but no contract was made under the seal of the board. It was held that as the work was incidental and necessary to the purposes for which the board was created, he was entitled to recover (*Haigh* v. *North Bierley Union* (*Guardians of*) (1858), 28 L. J. Q. B. 62 ; 23 J. P. 195). So a plaintiff was held entitled to recover the price of coals supplied to a workhouse under a parol contract (*Nicholson* v. *Bradfield Union* (*Guardians of*) (1866), L. R. 1 Q. B. 620 ; 30 J. P. 549). The appointment of a medical officer was held not to come within the exceptions to the general principle that a seal is necessary (*Dyte* v. *St. Pancras* (*Guardians of*) (1872), 36 J. P. 375 ; 27 L. T. 342). A plaintiff at the request of the defendants prepared plans for an enlargement of their school, and did other work in connection therewith. There was no express contract to pay for such services, the only real contract between the parties being expressed in a resolution by the defendants to pay the plaintiff a percentage on the cost of the buildings to be erected. The defendants having refused to carry out the work on the plaintiff's plans, the plaintiff sued them for breach of contract :—*Held*, that the contract not being under seal, he could not recover (*Start* v. *West Mersea School Board* (1899), 63 J. P. 440 ; 15 T. L. R. 442). The two last decisions turned upon the ground that the contracts sued upon were executory only. See also *Godfrey, Ltd.* v. *Alton R. D. C.* (1915), 79 J. P. N. 280. In *Austin* v. *Bethnal Green* (*Guardians of*), *ante*, p. 398, it was held that a contract for the engagement of a clerk to a workhouse master must, in order to bind the guardians, be under seal. See also *Smart* v. *West Ham Union* (*Guardians of*) (1855), 10 Ex. 867.

In *Phelps* v. *Upton Snodsbury Highway Board* (1885), 49 J. P. 408, a highway board by a resolution directed their clerk to take the necessary steps to oppose a Bill which contained provisions contrary to the Railways Clauses Acts, and would prejudicially affect certain highways within their district. In pursuance of such resolution, the clerk instructed the plaintiffs, a firm of solicitors. In an action by them to recover from the board their costs of the opposition, it was held that the purpose for which they had been retained was not incidental to the purposes for which the board was incorporated, and that, as they had not been retained under seal, they had no right of action. See also *Baker* v. *Holme Cultram U. D. C.*, *post*, p. 403.

By the Burial Act, 1852, s. 24, a burial board appointed under that Act is incorporated and has a common seal ; and by s. 31 may enter into contracts with any person for building chapels and other premises, and doing any other works, which contracts must specify the work to be done, the prices to be paid, the time within which the work is to be done, and the penalty the contractor is to pay for non-performance ; the contracts are also to be entered in a book to be kept by the board for that purpose. The plaintiff contracted to do certain repairs to the chapels and premises of the defendants for £38 ; and the seal of the board was affixed to the contract. During the work their surveyor verbally ordered the plaintiff to do small repairs not included in the contract. The plaintiff sought to recover £13, the cost of these extras, and the defendants denied liability on the ground that they had not

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been contracted for under seal. It was held,—by FRY, L.J., that the board were not liable, as they were bound to contract for such work as the plaintiff had executed strictly in accordance with the terms of s. 31; but by MATHEW, J., that they were liable, as each extra was of trivial importance and the board could not be expected to affix their seal to every order for small matters as they were required (*Stevens* v. *Hounslow Burial Board* (1889), 54 J. P. 309; 61 L. T. 839).

There is a fourth exception to the general rule that a corporation must contract under seal, viz.: the equitable doctrine of part performance operates in the case of a corporation in the same manner as in the case of an individual (*Crook* v. *Seaford Corporation* (1871), L. R. 6 Ch. 551; *Wilson* v. *West Hartlepool Rail. Co.* (1865), 2 De G. J. & S. 475; *Oxford* (*Mayor, etc. of*) v. *Crow, infra*; *Hoare* v. *Kingsbury U. D. C.*, p. 403, *post*).

Any variation of a contract under seal must itself be under seal (*Kellett* v. *Stockport Corporation* (1906), 70 J. P. 154).

Mutuality.

The duly sealed contracts of corporations are in like position as those of private persons. Where a contract with their common seal affixed is sent by a corporation to the other party to the agreement to be signed and is so signed, or having been first signed by the other party, is sealed by the corporation, such contract is good: so too, if alterations made by the corporation after the other party has signed are assented to by him before the sealing. The plaintiff board advertised for 300 to 400 tons of granite spalls for workhouse purposes to be delivered by a particular day. The defendants sent in a tender, which was accepted, and the plaintiffs' usual form of contract was sent to the defendants. Two days later the defendants sent back the contract signed by them agreeing to deliver by the day fixed, but adding the words "weather and other circumstances permitting." Four days later the plaintiffs wrote acknowledging receipt of the signed contract, but pointing out that they (the plaintiffs) had erased the words "other circumstances." On the same day the defendants wrote that they had put the order in hand. Four days later the plaintiffs affixed their common seal to the contract. The defendants did not execute any part of their contract by the day specified, alleging that want of ships and stress of weather had prevented them. After a month's delay the plaintiffs bought in the market at prices above the contract rate and sued for damages for breach of the agreement:—*Held*, that as the defendants had assented to the alteration in the contract made by the plaintiffs, there was mutuality between the parties at the time the seal was affixed, and that consequently the plaintiffs were entitled to succeed (*Dartford Union* (*Guardians of*) v. *Trickett & Sons* (1888), 53 J. P. 277; 59 L. T. 754; affirmed (1889), 5 T. L. R. 619). For an instance where a person was held not to be bound owing to want of mutuality, see *Kidderminster* v. *Hardwick*, *post*, p. 401.

Contracts by committees.

The statutory provisions as to contracts made by the ordinary committees of the councils of urban districts (other than boroughs) and of rural districts are contained in the L. G. A., 1894, s. 56 (1), *post*. Sub-section (4) of the same section provides, however, that the section shall not apply to the council of a borough. Therefore, where the urban sanitary authority is the council of a borough, s. 200, *post*, p. 465, applies. By the L. G. A., 1894, s. 56 (1): "A . . . district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval. Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract." The council of a borough may by s. 200, *post*, p. 465, from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

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The position of a council in respect of a contract which a committee has purported to make appears to be the same whether the council is a rural or an urban one, viz.: that any contract which a committee may purport to make must be approved by the council appointing them, the effect of such approval being that the contract then becomes the contract of the council: see *Lawford* v. *Billericay R. D. C.*, [1903] 1 K. B., at p. 780. The approval or ratification of an agreement must be under seal where the agreement if originally made by the council would require to be sealed. A municipal corporation, on July 18th, caused certain tolls to be put up for letting by auction, one condition being that the purchaser should forthwith pay a month's rent in advance, and produce two sureties, who should sign the conditions and a draft lease. The defendant was the highest bidder; and he paid a month's rent in advance, and signed an agreement to become lessee indorsed on the conditions. According to some reports, the contract was also signed by the town clerk, who, however, was not authorised under seal to do so. The contract was not sealed by the corporation; but on August 7th, by a resolution under seal, they adopted the report of a committee, who reported that the tolls had been sold, and that the defendant had bought them for £350 and had paid a deposit of £29 3*s.* 4*d.* Three days previously, however, the defendant had written that he could not carry out his contract, and asking for a return of the deposit. On the corporation suing for breach of agreement, it was held that the contract was one which ought to have been under their seal; and that, as it was not sealed, or signed by any person authorised under seal to do so, and as the ratification (if any) on August 7th was too late, and as the payment of the deposit was not such a part performance as would have bound the corporation in equity specifically to perform their agreement, there was no mutuality, and the action was not sustainable (*Kidderminster* (*Mayor, etc. of*) v. *Hardwick* (1873), L. R. 9 Ex. 13). In so far as this case decided that a ratification must be under seal, it was followed in a case where a lessee of buildings belonging to a municipal corporation wrote letters to the mayor and chairman of the public improvements committee of the corporation (which had not been appointed under seal), offering to surrender his lease, pull down the buildings and erect new ones, provided the corporation would grant him a new lease on specified terms. These proposals, subject to agreed modifications, were accepted by the committee and approved by the council, but not under seal; and this approval was communicated to the lessee by letter from the town clerk. Afterwards the lessee withdrew his offer. It was held, that the contract not being under the seal of the corporation, nor signed on their behalf by any person authorised under seal to do so, nor ratified under seal, nor part performed nor acted on, could not be enforced by the corporation (*Oxford* (*Mayor, etc. of*) v. *Crow*, [1893] 3 Ch. 535). It will be observed that in the *Kidderminster Case*, *supra*, it was held that after a withdrawal by the other party, a ratification under seal was too late. A more recent decision, however, makes it doubtful whether, when a bargain has been made by a person with a committee, that person may in all cases, prior to ratification of the bargain by the council under seal, withdraw from his bargain. In *Bolton Partners* v. *Lambert* (1889), 41 Ch. D. 295, an offer of purchase was made by the defendant to one S., who was the agent of the plaintiffs, but not authorised to make any contract for sale. S. accepted it on behalf of the plaintiffs, but the defendant subsequently withdrew his offer. After the withdrawal, the plaintiffs ratified the acceptance of the offer by S. In an action for specific performance it was held that the ratification related back to the "acceptance" by S., and that therefore the withdrawal was inoperative. The *Kidderminster Case* was not cited in *Bolton Partners* v. *Lambert*, *supra*, and the decision in the last-mentioned case has been adversely criticised: see Fry on Specific Performance, 4th ed., in note at p. 677. In *Athy Guardians* v. *Murphy*, [1896] 1 I. R. 65, at a meeting of a dispensary committee, an agreement for the purchase by them as agents for the guardians from the defendant of a plot of land for a doctor's residence and dispensary, was signed by the defendant and by the chairman on behalf of the committee. The committee had no authority from the guardians to contract for the purchase of land; and the defendant subsequently withdrew his offer, and refused to carry out the agreement. After such withdrawal the agreement was approved by the guardians, but neither the agreement nor the approval was under seal. It was held (following the *Kidderminster* and the *Oxford Cases*, *supra*, and distinguishing *Bolton Partners* v. *Lambert*, *supra*) that the guardians were not entitled

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to specific performance. A contract must be ratified within a reasonable time after acceptance by an unauthorised person, and such reasonable time cannot extend beyond the time at which the contract is to commence (*Metropolitan Asylums Board* v. *Kingham & Sons* (1890), 6 T. L. R. 217. See also *In re Portuguese Consolidated Copper Mines, Ltd.* (1890), 45 Ch. D. 16; *Dibbins* v *Dibbins*, [1896] 2 Ch. 348. But see *Tottenham U. D. C.* v. *Hillier* (1920), 42 M. C. C. 221). Nor will ratification prevail so as to make unlawful an act which at the time of its performance was lawful (see *Bolton Partners* v. *Lambert*, *supra*, at 41 Ch. D., p. 307); or where the interests of strangers to the contract would be affected (*Ford* v. *Newth*, [1901] 1 Q. B. 683).

For a decision as to the validity of a contract made by the electric lighting committee of a metropolitan borough council, see *Bourne and Hollingsworth* v. *Marylebone Borough Council* (1908), 72 J. P. 129; reversed, [1909] W. N. 14; 72 J. P. 306.

Pleading absence of seal.

If a corporate body wish to rely on the defence that the contract sued upon is not under their common seal, such defence should be specifically pleaded (Order XIX., rr. 15, 20). Where contractors, subject to an arbitration clause, took out a summons for the appointment of an arbitrator, and the corporation appeared thereon and contested only the suitability of the persons proposed, the V.-C. of the Palatine Court thought that they could not at any later stage raise the defence of no seal (*Macdonald and Deakin* v. *Bacup Corporation* (1911), 130 L. T. Jo. 344).

Contracts "under this Act."

(*aa*) See *Hodge* v. *Matlock Bath U. D. C.*, *ante*, p. 398, for a case where an urban council were not acting "under this Act." In *Macdonald and Deakin* v. *Bacup Corporation*, *supra*, the V.-C. held that the corporation in reconstructing some streets were acting under the Tramways Act, 1870, and not "under this Act." For other cases raising the same point, see *Hoare* v. *Kingsbury U. D. C.*, *Douglass* v. *Rhyl U. D. C.*, *post*, p. 403, and *Att.-Gen.* v. *Gaskill*, p. 405, *post*. In determining what contracts may be said to be "under this Act" some assistance may be afforded by the cases collected in the notes to the P. A. Protection Act, 1893.

In writing and under seal.

(*b*) The provisions of this paragraph are imperative and not directory only. A local board engaged a builder to do certain works to a sewer, but there was no contract under seal; it was held, under the P. H. A., 1848, that though the works were executed no action could be maintained on the contract. The court proceeded upon the ground that the board must charge the rates with the cost of the contract, and that they could not do so unless they fulfilled the exigencies of the statute by entering into the contract in strict conformity with its requisitions (*Frend* v. *Dennett* (1858), 4 C. B. (N.S.) 576; 23 J. P. 56); and the Court of Chancery afterwards decided that relief in equity could not be given to the contractor (5 L. T. 73). See, however, *Bournemouth Commissioners* v. *Watts*, p. 405, *post*, as to the power of a local authority to act under an insufficient contract. In a case under the present statute, the defendants, an urban authority, verbally directed their surveyor to employ the plaintiff to prepare plans for offices. The plans being prepared, the defendants advertised for tenders for building in accordance therewith; but it was found that the plans were upon too extensive a scale, and the intended offices were not erected. There was no ratification under seal of the order given by the surveyor. A jury found that the offices were necessary for the purposes of the defendants, and that the plaintiff's plans were necessary for the erection of the buildings for which they were designed. It was held by the C. A. that, even assuming the contract to be founded on an executed consideration, the plaintiff could not recover, for the section was imperative (*Hunt* v. *Wimbledon L. B.* (1878), 4 C. P. D. 48; 43 J. P. 284). The House of Lords has since approved this decision, and has held that the provisions of this paragraph are obligatory and not merely directory, and apply to an executed contract of which the urban authority have had the full benefit, and which has been effected by their agent duly appointed under their common seal (*Young* v. *Leamington* (*Mayor, etc. of*) (1883), 8 App. Cas. 517; 47 J. P. 660); and see also *Mackay & Co.* v. *Toronto Corporation* (1919), 36 T. L. R. 6.

The owner of land abutting on a narrow public road, purposing to build houses fronting the road, at the suggestion of the urban authority altered his plans and agreed to remove his boundary fence and to throw a strip of land into the road. In consideration of his doing so, the authority agreed, at their expense, to make up and adopt the strip as a public road with a footpath adjoining his land as the building

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of the houses proceeded. This arrangement was embodied in a written document signed by the plaintiff, but the seal of the authority was not affixed. The landowner erected his houses, removed his fence, and gave possession of the strip to the authority, who, however, did not make it up as a public road, nor construct the footpath. In an action by the landowner to compel the authority to specifically perform their part of the agreement, they pleaded that it was not binding on them, and relied on s. 174 and the Statute of Frauds. It was held that the agreement was entered into by the defendants, not as a highway authority, but as an urban authority under the powers of the P. H. A., 1875. That, as there had been part performance, the Statute of Frauds was no defence to the action. But that, as the agreement was a contract for over £50 in value, s. 174 afforded them a good defence (*Hoare* v. *Kingsbury U. D. C.*, [1912] 2 Ch. 452; 76 J. P. 401). But in *Douglass* v. *Rhyl U. D. C.*, [1913] 2 Ch. 407; 77 J. P. 373, it was held that an authority was acting in regard to a proposed pier extension under local Acts and not under this Act, and that a plea of want of seal was no defence to an action by an engineer who had been employed to prepare a report and estimates; and in *Baker* v. *Holme Cultram U. D. C.* (1916), 80 J. P. 241; 14 L. G. R. 209, the plaintiff was held entitled to recover although there was no contract under seal because in a private Act, passed after work was done in connection with obtaining the Act it was directed that the costs, etc. of obtaining the Act should be paid by the defendants.

It is sufficient, however, if the contract is ratified under seal (*Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601; 66 J. P. 293). In that case the T. corporation petitioned for the extension of the borough by the inclusion within it of the whole or part of the urban district of C., whose council retained the plaintiffs to act as solicitors and parliamentary agents in opposition. The extension Bill received the Royal assent on July 30th, 1900, and any liability of C. to the plaintiffs was, on the dissolution of the C. council, transferred to the corporation. The plaintiffs' bill was delivered to C. on November 8th, 1900, and a copy was sent to the corporation on November 26th, 1900. Resolutions—not sealed—of the C. council were passed from time to time from May 18th, 1900, and communicated to plaintiffs. On September 6th, 1900, the C. council resolved that their seal should be, and it was, affixed to such resolutions. The plaintiffs' claim included items for work done and disbursements made after the sealed retainers were received by them. It was held that the confirmation under seal of the original retainers created an obligation binding upon the council without any new consideration: that it was not *ultra vires* for them to bind themselves to pay by an instrument under seal; and that the confirmation under seal on September 6th, 1900, of the earlier unsealed retainers was sufficient to satisfy the requirements of s. 174. It was in the same case held that it is not necessary that the other contracting party should seal the contract.

A petition was presented by the plaintiffs and the defendants to the L. G. B., stating an agreement whereby the plaintiffs were to transfer to the defendants certain land forming part of the plaintiffs' district, on condition that the defendants should adopt a certain road and dedicate it as a public highway. The agreement referred to was not under seal, but the petition bore the seals of the plaintiffs and the defendants. The cost of completing the road was estimated at over £50. In an action for specific performace of the agreement it was held that under this section the agreement must be under seal; that the petition though under seal was not a deed and, therefore, was not a contract under seal within the section. It was held further, that, apart from this defect, the defendants had no power to enter into an agreement for the dedication of a road or a street as a highway (*Tunbridge Wells Improvement Commissioners* v. *Southborough L. B.* (1888), 60 L. T. 172; 5 T. L. R. 107).

Where an urban authority are also a municipal corporation, they are but one corporate body (*Andrews* v. *Ryde* (*Mayor, etc. of*) (1874), L. R. 9 Ex. 302); but when acting as an urban sanitary authority their contracts are governed by this section and not by the general law as to the contracts of corporate bodies (*Young* v. *Leamington* (*Mayor, etc. of*), p. 402, *ante*).

Under the London Government Act, 1899, s. 8 (3), a liability exceeding £50 may not be incurred by a metropolitan borough council except on a resolution of the council passed on an estimate submitted by the finance committee. See *Gray* v. *Hackney Borough Council* (1904), 2 L. G. R. 429, for a decision that this section

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barred a "transferred" officer's claim for £112 on a *quantum meruit* in respect of extra work done at the request of the finance committee, the council having refused to adopt a recommendation by the committee that he be paid £50.

The limit of value fixed at £10 by the P. H. A., 1848, was raised to £50 by 37 & 38 Vict. c. 89, s. 30.

Limit of value.

The provisions of this paragraph do not apply to a contract under £50. Such a contract may be made by parol (*per* BRAMWELL, L.J., in *Hunt* v. *Wimbledon L. B.*, *supra*, and *per* LINDLEY, L.J., in *Young* v. *Leamington*, *supra*, at 8 Q. B. D., p. 585). The paragraph applies only to a contract which the parties, at the time of entering into it, contemplate will exceed that sum. Therefore, when scarlet fever had broken out, and an urban authority appointed a committee under s. 200, and a medical man agreed verbally with the committee on behalf of the authority to attend patients at the rate of 5*s.* 3*d.* per tent per day, and attended until the amount due was nearly £100, it was held that although more than £50 became due it was not a contract "whereof the value or amount exceeds £50" within the meaning of the section, because at the time of entering into it the parties had not ascertained that it would exceed £50, and that the authority were liable to the medical man (*Eaton* v. *Basker* (1881), 7 Q. B. D. 529; 45 J. P. 616). See also *Wood* v. *East Ham U. D. C.* (1907), 5 L. G. R. 403; 71 J. P. 129, where COLLINS, M.R., appeared to incline to the view that the engagement of an officer under s. 189 at a salary of over £50 was not necessarily within the paragraph, and a county court case, *Mansbridge* v. *Barnet U. D. C.*, cited on p. 452, *post*.

Under the similar Irish provision it has been held that the "value or amount" of a contract is the amount which in the light of the facts within the contemplation of the parties and in reference to which the contract is made would be recoverable by the contractor on completion (*Munro* v. *Mallow U. D. C.*, [1911] 2 I. R. 130). In this case a contractor agreed with the council under four separate contracts, not formally reduced into writing, to sink four artesian wells on the terms that he should go on boring until he met with unforeseen difficulties or obtained a good supply of water, or until a reasonable time had elapsed, or until the council told him to stop. It was contemplated that it would cost more than £50 to bore each well; and the court held that although the council might have stopped the work at any moment the absence of seal prevented the contractor from recovering.

It would appear that under certain circumstances the paragraph may not apply even when the parties contemplate the making of a contract the value whereof may exceed £50. Coal merchants tendered for the supply to an urban council of coals which it was thought would exceed in value £100. The tender contained stipulations that, if it was accepted, a formal contract and a bond with two sureties should be executed. The tender was accepted, subject to the formal contract and bond being duly executed. The contract and bond were forwarded to the coal merchants, but were never executed. The coal merchants afterwards, from time to time, supplied quantities of coal which were accepted, the value of the coal supplied not amounting, in any one instance, to £50, but amounting in the aggregate to over £50. It was held that the council were bound to pay, under an implied contract, for each lot of coal so supplied and accepted (*Spencer & Co.* v. *Southall-Norwood U. D. C.* (1905), 3 L. G. R. 641; 69 J. P. 308). The decision went on the ground that there was no acceptance of the tender pending the execution of a formal contract, and therefore nothing constituting a contract to which the provisions of the statute could apply; consequently there was only a contract on the occasion of each order and delivery.

Subsequent sealing.

The defendants, an urban authority, by contract not under seal, employed the plaintiffs as engineers to do certain work. The plaintiffs performed part of the work, exceeding in value £50, and then required the defendants to affix their seal to the contract. This the defendants did, believing that it was for the benefit of the ratepayers that the contract should be completed. CAVE, J., held that, as part of the work was unperformed when the seal was affixed, and there was consideration for affixing it in the plaintiffs' promise to complete the work, it was competent for the defendants to constitute the contract a good contract under seal within s. 174 in respect of the work already done; and, therefore, that the plaintiffs were entitled to maintain their action for the value of that work (*Melliss* v. *Shirley L. B.* (1885), 14 Q. B. D. 911). (The decision in this case was reversed upon another point: (1885),

16 Q. B. D. 446; 50 J. P. 214.) See also *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 403, where it was held that, even without a new consideration, there may be a binding confirmation under seal. **Note to Section 174.**

Where an urban authority enters into a sealed contract with a contractor for the construction by him of works, and the contract contains the usual power for the engineer, who has the control and supervision of the works, to vary, alter, enlarge, or diminish any of them, all variations and alterations coming within the terms of the power conferred on the engineer can be validly made without being under the common seal of the authority (*Williams* v. *Barmouth U. D. C.* (1897), 77 L. T. 383). Effect of variations from contract.

An urban council issued under their seal conditions in accordance with which architects were to tender designs for the erection of municipal buildings. An assessor was to select the architect whose plans he considered best, but the council were not expressly bound to appoint the assessor's choice. The plaintiff was in fact selected by the assessor, and appointed by the council. He prepared plans, but the L. G. B. refused leave to borrow for the amount of the scheme. Accordingly the plaintiff prepared fresh plans at less cost under instructions from the council. This scheme was never carried out, and the plaintiff sued for his fees under the original agreement. The defendants objected that there was no contract under seal. It was held (applying the *Barmouth Case*, *supra*), that these fees had been earned under a modification of the original scheme and not under a new scheme; that s. 174 was satisfied by the original conditions of tender; and that the plaintiff was entitled to recover (*Hunt* v. *Acton U. D. C.* (1908), 72 J. P. 345). See, further, as to variations from an original contract and extras, *Bell* v. *Bridlington Corporation*, and other cases on pp. 409 *et seq.*, *post*.

An agreement between an urban authority and a contractor employed to construct works for them, as a compromise and in full settlement of all claims by him against the urban authority is not a contract within s. 173 of the P. H. A., 1875, necessary for carrying that Act into execution, so as to require to be sealed with the common seal of the urban authority under s. 174; and therefore such agreement, though not under seal, is capable of being enforced against the urban authority (*Williams* v. *Barmouth U. D. C.*, *supra*; see also *Leicester Guardians* v. *Trollope* (1911), 75 J. P. 197). Compromise of action or claim.

An agreement by a local board compromising an action is not within this section, and is not void by reason of its not being under seal (*Att.-Gen.* v. *Gaskill* (1882), 22 Ch. D. 537).

1 Vict. c. 78, s. 44 (see now the Municipal Corporations Act, 1882, s. 141), after reciting that it was expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund, provided that any order of the council of any borough for the payment of money out of the borough fund might be removed into the court by *certiorari*. A resolution was passed by a corporation ordering payment of certain sums, each exceeding £50, to contractors for costs incurred in paving a street, no contract having been entered into under the seal of the corporation. On an application for a *certiorari* to bring up and quash such resolution on the ground that it was a misapplication of the borough funds under the Act above cited, it was held that as the work was useful and done at a reasonable cost, and there was no suggestion of corruption or partiality there had been no misapplication, and the court in its discretion refused to grant the *certiorari* (*R.* v. *Norwich* (*Mayor of*) (1882), 30 W. R. 752; 46 J. P. 308 n). From this case and *R.* v. *Prest* (1851), 16 Q. B. 32, it is to be inferred that a contract for over £50, though it may not be enforceable by reason of not being under seal, is nevertheless not absolutely void. This view of these decisions was adopted by the court in *Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87; 49 J. P. 102. There in an action by a local authority to recover paving expenses under s. 150, it appeared that part of the work to an amount exceeding £50, had been done by contractors who had no contract under seal, it was held that this afforded no defence to the frontagers. It is difficult to reconcile this decision with the judgments in *Frend* v. *Dennett*, *ante*, p. 402; but see *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 403, where the principle of the Bournemouth case was applied. Unsealed contract not void.

In *Hunt* v. *Wimbledon L. B.*, p. 402, *ante*, BRAMWELL, L.J., said: "The enactment relates to a contract which is the act of both parties, and is applicable not to Whether contractor's

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seal also necessary.

one of them alone, but to both of them. I do not mean to say that the section makes anything particularly necessary upon the part of the contractor, but it requires that the evidence of the obligation of the two parties must be in writing and sealed with their seals." This opinion, however, was not required for the decision of the case, and in *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 403, it was held that an authority may be liable under a contract which they have sealed, even though it is not signed by the other party.

Sealed acceptance of a tender.

A valid contract may under certain circumstances be made by sealing an acceptance of a tender, *i.e.*, where nothing else remains to be done; but in many instances, the sealing of such an acceptance will be inoperative. In March, 1901, a council advertised for tenders for the execution of certain works. One condition was that the person tendering should undertake to execute a contract and a bond with two responsible sureties for the satisfactory completion of the works. The plaintiff tendered, and on May 10th, 1901, the council resolved that his tender should be accepted, and they instructed their clerk to write to him to that effect, and to affix the council's seal to the letter. Such letter was duly sent. It was held that the acceptance of the tender did not conclude a contract between the parties, for a formal contract was expressly provided for, and some important details were left unsettled (*Bozson* v. *Altrincham U. D. C.* (1903), 1 L. G. R. 639; 67 J. P. 397).

Stamp duty on contracts.

11 & 12 Vict. c. 63, s. 151, exempted the contracts of local authorities from stamp duty; but the exemption was taken away by 35 & 36 Vict. c. 79, s. 42, and has not been restored. As to the effect of a local Act incorporating the first-mentioned Act, and thereby extending the exemption to deeds executed under the local Act, see *Bath (Mayor, etc. of)* v. *Commissioners of Inland Revenue* (1871), 40 L. J. Ex. 181; 20 W. R. 80.

Penalty clause; not obligatory.

(*d*) It was formerly considered that the provision in s. 174 (2), that every contract made by an urban authority whereof the value or amount exceeds £50, "shall specify some pecuniary penalty to be fixed in case the terms of the contract are not duly performed" was obligatory, and not merely directory; and that if such penalty was not specified, an action on the contract against the authority could not be maintained (*British Insulated Wire Co.* v. *Prescot U. D. C.*, [1895] 2 Q. B. 463; 59 J. P. 552). An appeal by the plaintiffs in this case was dismissed on agreed terms without any judgments being delivered (see [1895] 2 Q. B. 538). And see *Murray* v. *Uxbridge U. D. C.* (1896), Times, March 21st. The Court of Appeal have, however, now decided (by a majority) that the provision is only directory (*Soothill Upper U. D. C.* v. *Wakefield R. D. C.*, [1905] 2 Ch. 518; 69 J. P. 447). In the court below, SWINFEN EADY, J., held that the whole of sub-s. (2) applies only to cases where work, materials, matters or things are to be furnished, had or done to or for an urban authority for a price in money to be paid by such authority ([1905] 1 Ch. 53; 69 J. P. 19).

Surveyor's estimate and report.

(*e*) This sub-section is only directory, because it is something for the authority alone to do, and the obtaining of the estimate and report from the surveyor is not a condition precedent to the power to contract. Therefore an urban council will be liable for the breach of a contract entered into for the performance of works, though no estimate and report are obtained (*Nowell* v. *Mayor, etc. of Worcester* (1854), 9 Ex. 457; 18 J. P. 88; and see *Young* v. *Leamington (Mayor, etc. of)*, *ante*, p. 402). With regard to this sub-section the Court of Queen's Bench said that as between the local board and their constituents, "If the work may be both executed and repaired under the provisions of the Act, there must be an estimate and report on the execution *and* the repair; but if the work may be only executed, *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In the case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would the estimate and report on repair where none can be done" (*Cunningham* v. *Wolverhampton L. B.* (1857), 7 El. & Bl. 114; 21 J. P. 262).

Notice and tenders and security.

(*f*) This sub-section is directory only. It and the preceding sub-section relate to "things to be done before contracts are entered into, and done by the urban authority, the contractor having nothing to do with the matters mentioned": *per* Lord BRAMWELL, in *Young* v. *Leamington (Mayor, etc. of)*, *ante*, p. 402

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The required security is usually taken in the form of a guarantee by sureties; and care must be taken that the sureties are fully informed of the nature of the undertaking and of all the circumstances connected with it. Where a local board represented that works would be executed under the supervision of their surveyor, and did not disclose that they had engaged another surveyor to join in the supervision, it was held that the contractor's surety was discharged from liability by reason of this concealment (*Stiff* v. *Eastbourne L. B.* (1868, 1869), 19 L. T. 408; 20 L. T. 339).

A surety for a contractor is not discharged from liability although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act or omission of the contractor against which the surety has, by the terms of his contract of suretyship, guaranteed the employer. The defendants, as sureties, contracted with the plaintiff authority that contractors would well and truly execute a contract for the construction of sewers. The contract gave to the plaintiffs the right of superintending the works through their engineer; and also provided for the retention of a certain percentage of the contract price until a final certificate should be given by such engineer, six months after his certificate of the completion of the works. The contractors did portions of the work in a defective manner, and fraudulently concealed it so as to prevent discovery; and the engineer ultimately gave his final certificate, upon which the retention money was paid to the contractors. In an action by the plaintiffs against the defendants as sureties, upon findings by a jury that the certificate had been obtained by fraud, but that there was an omission of proper superintendence of the work on the part of the plaintiffs, which led to the scamping of the work, it was held that the mere non-exercise by the plaintiffs of their right of superintendence did not discharge the defendants from their liability, and that they were not discharged by the fact that the certificate had been given or by the fact that the retention money had been paid thereon, inasmuch as the mere giving of the certificate was not proved to have altered the position of the defendants for the worse, and both that and the payment of the retention money were procured by a dishonest execution of the work against which the defendants had by their contract guaranteed the plaintiffs (*Kingston-upon-Hull* (*Mayor, etc. of*) v. *Harding*, [1892] 2 Q. B. 494; 57 J. P. 85).

See as to the position of a surety for a contractor in respect of costs ordered to be paid by the contractor in litigation between him and a local authority (*Hoole U. D. C.* v. *Fidelity, etc. Co.*, [1916] 1 K. B. 25); affirmed on appeal on the ground that the local authority had departed from the provisions of their contract with the contractor: see [1916] 2 K. B. 568; 80 J. P. 353.

Where on a contractor's failure another firm was called in to complete the works, and the time fixed in the original contract was exceeded, it was held in an action against the original contractor's sureties that the clauses in his contract as to liquidated damages in case of delayed completion did not apply where the control of the contract had passed out of his hands (*British Glanzstoff Manufacturing Co., Ltd.* v. *General Accident, etc. Insurance Corporation, Ltd.*, [1913] A. C. 143). On a contractor's failure his sureties employed the plaintiff to carry out the contract, but allowed the building owners to supervise the work and make all arrangements: it was held that the sureties were liable to the plaintiff in respect of an unjustifiable seizure of the works by the owners on the ground of alleged delay (*Lodder* v. *Slowey*, [1904] A. C. 442).

Decisions upon contracts for execution of works.

A contract between a local board and the plaintiffs for levelling, paving, etc. certain streets, provided that the plaintiffs should be paid when the money was collected from the different owners. It turned out that the money could not be obtained from these owners as the notices given to them by the board were bad:— *Held*, that whether the collection of the money was a condition precedent to the right to sue for the price of the work or not, there was an implied contract on the part of the board to take all necessary steps for collecting the money, and that they were, therefore, liable to the plaintiffs (*Worthington* v. *Sudlow* (1862), 2 B. & S. 508; 31 L. J. Q. B. 131).

Where an authority submit plans and estimates to contractors, they do not by implication guarantee that the work can be successfully executed according to such plans and estimates (*Thorn* v. *London* (*Mayor, etc. of*) (1876), 1 App. Cas. 120;

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40 J. P. 468; *cf. Boyd and Forrest* v. *Glasgow and S. W. Rail. Co.*, [1915] S. C. (H. L.) 20.

In a contract to execute certain sewage works the plaintiffs covenanted to do the works described in the drawings and specifications according to the drawings, specifications, etc., and the defendants covenanted to pay for the works on receipt of the written certificate of their engineer as provided by the conditions. The specification provided (*inter alia*) that the plaintiffs must verify all representations, and not rely upon their accuracy. On completion the plaintiffs claimed £36,574 from the defendants on the grounds—first, that the plans showed a certain existing wall extending nine feet below the Ordnance datum line which could be utilised for the purposes of the works; that this wall did not exist, and that consequently the plans for the works had been altered, and the plaintiffs, at the direction of the engineer, had completed the works at this extra cost. Secondly, that the defendants had fraudulently misrepresented the structure and existence of this wall, and had thereby induced the plaintiffs to enter into the contract to their detriment. The defendants relied on the absence of a certificate and on the conditions of the specification, and they denied the making of any representation and any fraud. It was held that the specification only protected the defendants in respect of honest mistakes by themselves or their agents (*Pearson* v. *Dublin Corporation*, [1907] A. C. 357).

A contractor has no claim against his employer in respect of loss occasioned to him by a stranger wrongfully obstructing his access to the site of the work (*Porter* v. *Tottenham U. D. C.*, [1914] 1 K. B. 663; affirmed, [1915] 1 K. B. 776; 79 J. P. 167).

The defendant corporation advertised for tenders for the construction of certain reservoirs, and the plaintiffs sent in a tender which was accepted. Upon their attending to examine the drawings, specifications and general conditions, the assistant engineer of the defendants, in answer to a question, said that the conditions were the ordinary conditions. The defendants, upon subsequently reading the conditions, found that they were unusual, refused to go on with the contract, and sought to recover their deposit. It was held that they were entitled to recover (*Moss & Co., Ltd.* v. *Swansea Corporation* (1910), 74 J. P. 351).

Arbitration clauses and certificates.

An agreement between a local board and a contractor contained a clause that any dispute between them should be referred to the decision of the clerk to the board. The contractor having brought an action in respect of the agreement, the board applied to a judge at chambers to stay the action, in order to enforce the submission to arbitration. The judge declined to stay proceedings on the ground that the fact of the reference being to the clerk of one of the parties was a sufficient cause for refusing within the Common Law Procedure Act, 1854, s. 11. It was held on appeal that a reference ought to take place, though not to the clerk, and that the case must stand over till the parties could agree as to a referee, or again apply to the court (*Pickthall* v. *Merthyr Tydvil L. B.* (1886), 2 T. L. R. 805). For another case in which the court refused to refer a dispute to the surveyor of the local authority, see *Nuttall* v. *Manchester* (*Mayor, etc. of*) (1892), 8 T. L. R. 513. This case was commented on in *Eckersley* v. *Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667, and the rule deducible from the cases appears to be that when parties designate as arbitrator the engineer or any other officer of the council, the court will not interfere unless they see some probability that he will be biassed, or unless he had put himself into such a position (*e.g.*, that of a material witness) that it is not becoming for him to act as arbitrator. See *Belcher* v. *Roedean School Site and Buildings, Ltd.* (1901), 85 L. T. 468; *In re Baring and Doulton* (1892), 61 L. J. Q. B. 704; *Jackson* v. *Barry Rail. Co.*, [1893] 1 Ch. 238; *Ives and Another* v. *Willans*, [1894] 2 Ch. 478; *Foster and Dicksee* v. *Mayor, etc. of Hastings* (1903), 87 L. T. 736; *Blackwell & Co., Ltd.* v. *Derby Corporation* (1911), 75 J. P. 129; *Freeman & Sons* v. *Chester R. D. C.*, [1911] 1 K. B. 783; 75 J. P. 132; *Bristol Corporation* v. *J. Aird & Co.*, [1913] A. C. 241; 77 J. P. 209. See as to a condition in an agreement making arbitration and award a condition precedent to liability, even on an issue of fraud, *Gaw* v. *British Law Fire Insurance Co.*, [1908] 1 I. R. 245.

Contractors sued a council for sums alleged to be due under the contract and for damages for wrongfully terminating it. The contract contained a wide arbitration clause, but the defendants did not apply for a stay of the action. Subsequently, however, their engineer without notice to the parties made an award purporting to decide the disputes covered by the action. It was held that such

award was no bar to the plaintiffs' claim (*Doleman & Sons* v. *Ossett Corporation*, [1912] 3 K. B. 257).

A contract for the construction of sewerage works contained a reference of all matters in dispute to the engineer. After certain work had been done the contractor refused to complete, and alleged that he had been induced to enter into the contract by fraudulent misrepresentation as to the nature of the subsoil. On an action by the contractor to recover damages and to have the contract declared void, the defendants applied for a stay of the proceedings. It was held that the dispute was not a dispute "upon or in relation to or in connection with the contract" within the meaning of the reference, and that the defendants were not entitled to have the proceedings stayed (*Monro* v. *Bognor U. D. C.*, [1915] 3 K. B. 167; 79 J. P. 286).

An award of an arbitrator may take the place of an order in writing for extras where the order has been wrongfully refused and the arbitration clause is wide enough to embrace a dispute as to whether the work done was an extra (*Brodie* v. *Cardiff Corporation*, [1919] A. C. 337; 83 J. P. 77).

Contractors agreed to do all work necessary to sink a well and erect a pump until a copious supply of water was obtained, the works to be completed to the satisfaction of the council's engineer. Having been told to bore no deeper, they put in a pump and sued for their money, but failed for want of the engineer's certificate. They then offered to do everything necessary to complete the contract, and obtain a certificate. The council, however, refused on the ground that the contract was at an end. It was held that the first action did not terminate the contract; and that, as the council had now repudiated it wrongfully, the contractors could sue for the value of their work (*Athlone R. D. C.* v. *Campbell* (1913), 47 Ir. L. T. 142).

It was held in *Roberts* v. *Bury Improvement Commissioners* (1870), L. R. 5 C. P. 310; 34 J. P. 821, that a clause empowering the employers' architect to decide if the contractor had failed to exercise due diligence, did not empower him to decide as to a cross-allegation that any delay was due to the default of the employers and their architect in not supplying plans and setting out the site.

A building contract provided that the decision of the owners' architect on all matters in relation to the work should be final, and that payments should be made on his certificate. The architect, under a misapprehension of his position, allowed his judgment to be influenced by the owners and improperly delayed issuing his certificates in accordance with their instructions. After the expiration of the period of maintenance the contractor sued the owners for the final balance alleged to be due, but no final certificate was issued until after the writ. It was held that the owners were precluded from setting up as a defence either that the issue of the certificate was a condition precedent, or that the certificate was conclusive as to the amount of the claim (*Hickman & Co.* v. *Roberts*, [1913] A. C. 229).

Variations and extras, etc.

By a contract under seal a contractor undertook to execute sewerage works for a corporation at a fixed price. He alleged that the work had been so essentially varied under the orders of the corporation's engineer that he was entitled to disregard the fixed price, and claim payment on the basis of the cost of the work, either under an implied new contract, or on the ground that the whole work was "extra work" executed in accordance with the provisions of the contract. It was held by an official referee (1) that on the evidence there had been no essential variation justifying such a contention; (2) that even if there had been such a variation he was not entitled to claim *quantum meruit* upon the basis of an implied new contract, because there was no contract under seal as required by s. 174, and, further, because the engineer had no authority to order such a variation from the contract; and (3) that so far as variations and extra work had been properly ordered by the engineer, the proper basis of payment was the contract sum, plus any difference in cost due to such variations or extras to be ascertained as provided for by the contract, and the contractor could not reject the contract sum and claim to be paid on the basis of cost and expenses (*Bell* v. *Bridlington Corporation* (1908), 72 J. P. 453). Again, in *Jackson* v. *Romford R. D. C.* (1909), 73 J. P. 248, the plaintiff had contracted to carry out sewerage works. In consequence of orders the work was varied and rendered much more expensive, and he claimed to be entitled to payment on a *quantum meruit* based on the cost and value of the work. The official referee held that he was only entitled to be paid

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on the basis of the contract price plus extras. See also as to a claim based on a *quantum meruit*, *Hodge* v. *Matlock Bath U. D. C.*, p. 398, *ante*.

Where a contractor undertook to do work for a lump sum and substantially though not completely executed the work he was *held* entitled to recover the lump sum subject to a deduction to cover the cost of completion provided the work done was of the kind contracted for and of value to the employer and had not been abandoned unfinished by the contractor (*Dakin* v. *Lee* (1915), 84 L. J. K. B. 2031; 59 Sol. J. 650).

A building contract required a written order in the case of all extras. During the work the employer insisted on the execution of certain works which he asserted, and the contractor denied, to be included in the contract. He gave no order in writing therefor; but it was held that the facts justified the arbitrator in inferring an implied promise to pay for such works if held to be extras (*Molloy* v. *Liebe* (1910), 102 L. T. 616). In *Jackson* v. *Romford R. D. C.*, *ante*, p. 409, the engineer had given no final certificate, and many of the extras were not ordered in writing; but the defendants had withdrawn their plea of no certificate and the plaintiff had withdrawn a charge of misconduct. The referee held, that upon this state of the pleadings, he could deal with the extras on their merits.

A sewerage contract provided that no claim for extras should be allowed unless submitted to the engineers within a given time; that the engineers should be sole judges as to the method of carrying out the works and the materials to be used in the construction thereof; and that in case of any dispute arising at any time, whether during the progress of the works or after completion, as to certain specified matters not including extras, and as to all other matters therein left to the decision of the engineers, their decision should be final and binding on all parties to the contract. It was held that a claim for extras was not within the scope of the arbitration clause, and consequently that an action by the contractor for the amount of the claim ought to be allowed to proceed (*Taylor* v. *Western Valleys Sewerage Board* (1911), 75 J. P. 409).

In *Brodie* v. *Cardiff Corporation*, [1919] A. C. 337; 83 J. P. 77, a contractor agreed to construct a reservoir for a fixed price, but additions, alterations, and variations thereto might be made as directed by the corporation or their engineer, but such were not to be paid for unless instructions were given therefor in writing by the engineer. Disputes, including those as to any certificate, finding, decision, requisition, or opinion of the engineer were to be referred to an arbitrator. During the progress of the work disputes did arise as to certain requirements of the engineer, which the contractor contended were extras but as to which the engineer refused to give written orders. Nevertheless the contractor carried out the work under protest and the matter was referred to arbitration. The arbitrator found that the requirements in question were not in accordance with the contract, and that the written orders had been wrongfully (though not dishonestly) withheld, and awarded certain sums to be paid in respect of these items. It was held that the arbitrator had power to award that the items should be paid for as extras, notwithstanding the absence of any order of the engineer.

A council's engineer ordered extra works which were executed, and ultimately gave a final certificate, in which he awarded a sum for extra work, but did not refer to or make any deduction in respect of penalties for non-completion by the date fixed. The council, in defence to an action, pleaded that such penalties had been incurred and should be deducted: the contractor replied that the delay was caused by the ordering of extras, and further that the certificate estopped the council in respect of any penalties. It was held by an Irish court that the contract gave the engineer no jurisdiction to decide whether the ordering of extras excluded the penalty clause; but (by a majority) that such ordering had in fact prevented due completion, and no claim for penalties could be justified (*Gallivan* v. *Killarney U. D. C.*, [1912] 2 I. R. 356).

In the course of carrying out a contract, a contractor was ordered by the architect to underpin adjoining property, such underpinning being urgently necessary. The consent of the adjoining owner was not obtained and he recovered damages against the contractor for trespass. It was held that the contractor was entitled to indemnity from the building owners (*Kirby* v. *Chessum* (1915), 79 J. P. 81; 12 L. G. R. 1136).

As to the construction of clauses as to "defects" in a sewerage contract, see *Adcock* v. *Bridge R. D. C.* (1911), 75 J. P. 241 (manholes not watertight). As to

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the meaning of "retention money," see *West Yorkshire Bank* v. *Isherwood Bros.* (1912), 28 T. L. R. 593; 76 J. P. 456, and as to the right to retention money when work is taken out of a contractor's hands and a new contract entered into with sureties to complete, see *Jas. McMahon, Ltd.* v. *O'Neill* (1915), 2 Ir. R. 384. As to the duties of a "clerk of the works," see *Leicester Guardians* v. *Trollope* (1911), 75 J. P. 197.

In contracts of supply of goods or materials where the quantities specified are merely stated as "estimated as the probable requirements," this does not constitute a firm contract to take the whole of the goods stated, and the authority is not liable to the contractor if less than the stated quantities are required, but the contractor is bound to supply the quantities stated as and when required (*Percival, Ltd.* v. *L. C. C.* (*Asylums Committee*) (1918), 82 J. P. 157; 16 L. G. R. 367.

"Engineer."

A contract to do work for a local authority stipulated that payment for work done should only be made on the production of a certificate from the engineer appointed under the contract, who was to fix the price of all extra work done under the contract but not included in the specification. The engineer under the contract was "J. M. of the firm of J. M. & Sons, or other the engineer of the corporation." While extra work was being done, but before a price had been agreed upon, J. M. died, and a member of his firm was appointed to carry out his duties under the contract. The contractor contended that the engineer so appointed had no jurisdiction to fix the price of the extra work. It was held that the duly appointed successor to the engineer named in the contract had jurisdiction to determine the price to be paid for work which was begun before his appointment (*Kellett* v. *Stockport Corporation* (1906), 70 J. P. 154).

"Specialists."

As to the liability of a local authority to a contractor in respect of defaults of sub-contractors appointed by the authority, but paid by the contractor out of the contract price, reference may be made to *Mitchell* v. *Guildford Union* (1903), 1 L. G. R. 857; 68 J. P. 84, and *Leslie* v. *Metropolitan Asylums Board* (1896), 68 J. P. 86 n. And as to the legal position generally where there are sub-contractors, or "specialists," see *Bower* v. *Chapel-en-le-Frith R. D. C.* (1911), 9 L. G. R. 339; 75 J. P. 122, 321; *Crittall Manufacturing Co., Ltd.* v. *London C. C.* (1911), 75 J. P. 203; *Young & Co. Ltd.* v. *White* (1912), 28 T. L. R. 87; 76 J. P. 14; *Ramsden and Carr* v. *Chessum & Sons* (1914), 110 L. T. 274; 78 J. P. 49; *Hampton* v. *Glamorgan C. C.*, [1917] A. C. 13; 80 J. P. 41, and *Elliott* v. *C. P. Roberts & Co.*, [1916] 2 K. B. 518; 81 J. P. 20.

Liquidated damages and penalties.

The plaintiff undertook to execute certain drainage works for the defendants. It was provided by the contract, among other things, that "the works shall be completed in all respects and cleared of all implements, tackle, impediments, and rubbish," before a fixed date, and in case of default the plaintiff agreed to pay certain sums to the defendants as liquidated damages. The works were not completed within the fixed period. It was held that inasmuch as the clearing away of the rubbish was included in the completion of the works, there was only one event, viz., the non-completion of the works by the fixed date, upon the happening of which those sums were to become payable, and that the plaintiff was, therefore, liable in respect of such sums as liquidated damages and not as penalties (*Law* v. *Redditch L. B.*, [1892] 1 Q. B. 127; 56 J. P. 292). See also as to the distinction between liquidated damages and penalty, *Strickland* v. *Williams*, [1899] 1 Q. B. 382; *Re White and Arthur* (1901), 84 L. T. 594; *Clydebank Engineering Co.* v. *Castaneda*, [1905] A. C. 6; *Pye* v. *British Automobile Commercial Syndicate, Ltd.*, [1906] 1 K. B. 425; *Diestal* v. *Stevenson & Co.*, [1906] 2 K. B. 345; *Webster* v. *Bosanquet*, [1912] A. C. 394; *De Soysa* v. *De Pless Pol*, [1912] A. C. 194; *Dunlop Tyre Co.* v. *New Garage and Motor Co.*, [1915] A. C. 79; 83 L. J. K. B. 1574; *Ford Motor Co.* v. *Armstrong* (1915), 31 T. L. R. 267.

Interruptions in performance of contracts.

During the recent war many contracts were either interrupted in or rendered impossible of performance by causes arising out of the war and quite beyond the control of the parties, *e.g.*, orders issued under the Defence of the Realm Acts and the operation of the Courts (Emergency Powers) Act, 1917. See *Leiston Gas Co.* v. *Leiston-cum-Sizewell U. D. C.*, [1916] 2 K. B. 428; 80 J. P. 385; *Wycombe Borough Electric Light and Power Co.* v. *Chipping Wycombe Corporation*, [1917] 15 L. G. R. 658; 33 T. L. R. 489 (contracts for Public Lighting); *Metropolitan Water Board* v. *Dick Kerr & Co.*, [1918] A. C. 119; 82 J. P. 61 (construction of a reservoir); *Hulton & Co.* v. *Chadwick & Taylor, Ltd.* (1918), 34 T. L. R. 230 (supply of paper);

Note to Section 174. *Blackburn Bobbin Co.* v. *Allen & Sons*, [1918] 2 K. B. 467; 87 L. J. K. B. 1085 (supply of timber); *Osmond* v. *Woolley* (1918), 87 L. J. K. B. 822; 118 L. T. 29 (hire of horses), where the rights and positions of the parties under the contracts were determined.

PURCHASE OF LANDS.

Power to purchase lands.

175. Any local authority (*a*) may for the purposes and subject to the provisions of this Act (*b*) purchase or take on lease (*c*) sell (*d*) or exchange (*e*) any lands (*f*), whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district (*g*).

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (*h*) (unless the Local Government Board otherwise direct) (*i*) be sold at the best price that can be gotten for the same (*k*), and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise (*l*), of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate (*m*).

See also s. 95 of the P. H. A. Amendment Act, 1907, *post*.

(*a*) Whether rural or urban.

(*b*) The reference appears to be to the provisions of the next section as to compulsory purchase of land, and to the provisions as to the acquisition of waterworks, gasworks, and markets in the previous sections applicable thereto.

Section 7, *ante*, p. 39, empowers urban district councils to hold lands for the purposes of this Act in their corporate name without licence in mortmain. This power was extended by the Mortmain and Charitable Uses Act Amendment Act, 1892, s. 1, to "any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land." The L. G. A., 1894, s. 24 (7), enables rural district councils to hold land for the purposes of their powers and duties without licence in mortmain.

Appropriation of land.

(*c*) As to the appropriation for some purpose of land already belonging to a council, see note (*h*), *infra*.

Gifts of land.

The word "purchase" must be taken to include gift. An urban council do not therefore require to be invested with the powers of a parish council under the L. G. A., 1894, s. 8 (1) (*h*), in order to accept a gift of land for purposes of this Act. The M. of H. hold that a formal conveyance of land is always desirable, even when land is given.

Immature schemes.

It sometimes happens that a council find it desirable to acquire lands (*e.g.*, when property is suddenly placed upon the market), although they are not prepared with any precise scheme of utilisation. In such a case, if a loan is required, the M. of H. usually allow only a short term for repayment; but, if during this period the council resolve upon some scheme for using the land, the Ministry are willing to entertain an application for sanction to a reborrowing for an extended period.

Purchase to avoid claims for compensation.

If the acquisition of lands becomes desirable, not because such lands are actually required for purposes of the Act, but because of probable claims for compensation (*e.g.*, when a private residence adjoins a refuse tip or sewage farm), the M. of H. are apparently disposed to consider that the purchase can legally be made, and to entertain an application for sanction to a loan if necessary.

Land required for purposes of local Acts.

When lands are required for purposes of undertakings established and regulated under local Acts, the powers of the Public Health Act are sometimes available to supplement those of the local Acts. See note (*b*) to s. 176.

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A purchase of lands in order to protect from pollution the gathering ground of waterworks has also been held to be "for the purposes of this Act."

Urban district councils who are municipal corporations also possess powers to purchase or otherwise acquire hereditaments for public purposes under the Municipal Corporations Act, 1882, s. 107.

Land for protection of water supply.

An authority purchasing by agreement land for a public park may lawfully covenant to keep it as an open space for the enjoyment of the public, "subject to no buildings or erections of any kind being put thereupon except such structures as summer-houses, a bandstand, or shelter not exceeding twelve feet in height, for the accommodation and convenience of the public." And such a covenant will prevent their erecting lavatories (*Stourcliffe Estates Co., Ltd.* v. *Bournemouth Corporation*, [1910] 2 Ch. 12; 74 J. P. 289).

Powers of municipal corporations.

Restrictive covenants.

In *Westhoughton U. D. C.* v. *Wigan Coal and Iron Co.*, [1919] 1 Ch. 159; 88 L. J. Ch. 60, the plaintiffs were lessees of the surface of part of settled estates under a lease from the tenant for life. The defendants were lessees of the mines beneath the surface under a prior mining lease from the trustees of the settled estates which empowered them to cause damage to the surface, but to make compensation to the trustees "their heirs and assigns." The defendants damaged the surface in the working of the mines.

Benefit of covenants in mining leases.

It was held that the plaintiffs, although not "assigns" of the trustees, were entitled to sue for injury to their common law right of support.

The owner of land leased it to an authority for thirty years for use solely as a public park; and the lease contained a covenant in the form of a declaration that if the authority should be desirous at any time during the term of purchasing the fee simple they could do so upon giving six months' notice and paying a certain sum. About one year before the lease expired they gave notice to purchase the fee. The lessor's representatives refused to convey, on the ground that the covenant purported to create an interest in land which was void for remoteness. The authority sued for specific performance or damages for breach of covenant. It was held that, though the purpose for which the land was to be assigned was charitable, yet, as the interest of the charity did not become effective until the happening of a future event which might happen at a time more distant than a life or lives in being and twenty-one years afterwards, the limitation was void for remoteness, and specific performance would not be granted; but that the contract to convey the land was not void either at common law or in equity, and that, therefore, the authority were entitled to damages for breach of it (*Worthing Corporation* v. *Heather*, [1906] 2 Ch. 532).

Lease with option to purchase.

A local authority proposing to lay out their funds in an unauthorised purchase may be restrained from so doing in proceedings instituted by the Attorney-General upon the relation of a ratepayer. See *Att.-Gen.* v. *Cardiff Corporation*, [1894] 2 Ch. 337; *Att.-Gen.* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516; 64 J. P. 276.

Unauthorised purchases.

Although, however, a proposed purchase may be restrained as being *ultra vires*, yet, if a conveyance be duly executed, it would seem that the transfer, as a matter of title and ownership, is complete, and that the property is effectually vested in the authority (*Ayers* v. *South Australian Banking Co.* (1871), L. R. 3 P. C. 548). Consequently, in the case of leaseholds, they become liable for the breach of any convenant in the lease assigned to them (*Batson* v. *London School Board* (1903), 20 T. L. R. 22; 67 J. P. 457); but this fact will not justify an authority in expending the rates upon the upkeep of property acquired by them without authority.

As to the obligation to redeem tithes on land taken for public purposes, see the Tithe Act, 1878, s. 1.

Redemption of tithes.

Whether land is purchased by agreement or compulsorily it would appear that the vendor is entitled to insist on the council taking a duly executed conveyance (*Great Hospital Trustees* v. *Norwich Corporation*, Local Government Chronicle, 1885, p. 860; *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 70 J. P. 345). And, although a purchasing council are entitled generally to say by what description land purchased shall be vested in them, the vendor may require the description to be such as to give effect to the true contract (*Monighetti* v. *Wandsworth Borough Council* (1909), 73 J. P. 91).

Conveyance.

As to the obligation to produce to the Commissioners of Inland Revenue, after completion of a purchase, the deed of conveyance, duly stamped, see the Finance

Stamped conveyances

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Act, 1895, s. 12, and *Eastbourne Corporation* v. *Att.-Gen.*, [1904] A. C. 155; 68 J. P. 393; *Att.-Gen.* v. *Felixstowe Gas Light Co.*, [1907] 2 K. B. 984; *Lord Advocate* v. *Caledonian Rail. Co.*, [1908] S. C. 566.

to be produced.

A council resolved to purchase certain lands, partly for allotments and partly for a recreation ground. According to them, the defendant, who had formerly been their clerk, suggested that a private person could purchase on better terms, and thereupon it was arranged that he should attend the sale and bid up to £800. He purchased the land for £400 and it was conveyed to him, but he refused to convey it to the council, who now claimed a declaration that he held the land as trustee for them. It was held that they were entitled to the declaration asked for, but must undertake with all convenient speed to get the necessary consent to pay him the purchase price and expenses (*Longfield Parish Council* v. *Robson* (1913), 29 T. L. R. 357).

Sale of land.

(*d*) It is not clear how an authority can have occasion to sell land for the purposes of the Act, unless for the purpose of acquiring other more convenient land. 35 & 36 Vict. c. 79, s. 41, enabled sanitary authorities in certain cases to mortgage their property, and this power is contained in s. 235, *post*, p. 532.

As to the sale of land by urban authorities as municipal corporations, see the Municipal Corporations Act, 1882, ss. 108, 109. Under these sections a corporation may sell in consideration of a perpetual rent-charge issuing out of the land sold (*Scarborough Corporation* v. *Cooper*, [1910] 1 Ch. 68: 74 J. P. 44); but, *semble*, *per* JOYCE, J., there is no such power under the P. H. A., 1875, s. 175. *Cf. In re Mayor, etc. of Plymouth & Walter*, [1918] 2 Ch. 354; 82 J. P. 273, in which the decision turned upon the construction of a local Act. As to sales by a corporation subject to restrictive covenants intended to bind purchasers *inter se*, see *Davis* v. *Leicester Corporation*, [1894] 2 Ch. 208; and as to the requisite approval of the L. G. B. in the case of sales or leases, see *ibid.* and *Canterbury Corporation* v. *Cooper* (1909), 100 L. T. 597; 73 J. P. 225.

As to the power of a statutory corporation to alienate land and in particular to dedicate it as a highway, see *Taff Vale Rail Co.* v. *Pontypridd U. D. C.*, and cases cited therewith, on p. 272, *ante*.

An authority offering under this section surplus lands for sale by auction in lots, subject to special conditions (subsequently incorporated into the conveyance of the lots sold) restricting the right of each purchaser as to building on his lot, is, like a private vendor, under an obligation to the purchaser of any lot to observe the restrictive conditions, as to the lots remaining unsold in its hands, to the same extent as purchasers of the lots, if sold, would be (*Holford* v. *Acton U. D. C.*, [1898] 2 Ch. 240). A corporation, having acquired land to widen a street, sold the surplus by auction, under conditions requiring purchasers to observe the building byelaws; but they reserved the right to waive or alter any stipulations as to any land not sold at the sale, or, with the consent of the purchaser, as to any land so sold. They consented to alter the plans of a purchaser so that the air space required by the byelaws was provided out of a square, and not out of land sold. It was held that there was, under the circumstances, no building scheme which the corporation was not at liberty to alter (*Att.-Gen.* v. *Richmond Corporation* (1903), 89 L. T. 700; 68 J. P. 73).

The M. of H. hold that a local authority have no power to carry out works merely for the purpose of enhancing the value of surplus land.

Purchase of extra land in order to resell.

As to the power of local authorities to purchase land beyond their strict necessities with a view to reimbursement by resale of the surplus, see *Galloway* v. *London (Mayor, etc. of)* (1866), L. R. 1 H. L. 34; *Quinton* v. *Bristol (Mayor of)* (1874), L. R. 17 Eq. 524; 38 J. P. 516; *Gard* v. *London Commissioners of Sewers* (1885), 28 Ch. D. 486; *Aldis* v. *London (Corporation of)*, [1899] 2 Ch. 169; 63 J. P. 376; *Fernley* v. *Limehouse District Board* (1900), 82 L. T. 524; 64 J. P. 328.

By a private Act a corporation were authorised (*inter alia*) to make certain "street works" within the limits of lateral deviation shown on their deposited plans; and to take "for the purpose of the street works, the lands shown on the deposited plans in connection therewith, and which they may require for the purposes thereof respectively":—*Held*, on the construction of the entire Act, that it did not authorise them to take lands shown on the plans, but not actually required for street works, for the purpose of reselling the same at a profit (*Donaldson* v. *South Shields Corporation* (1899), 68 L. J. Ch. 162; 79 L. T. 685).

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(*e*) The answer to the question whether an authority can purchase land for the express purpose of exchanging it for other land which they require for some purposes of the Act, would seem to be in the affirmative, and it is believed that in some instances the L. G. B. sanctioned loans under these circumstances. *Cf. Rolls* v. *London School Board*, *post*, p. 421. Purchase in order to exchange.

(*f*) See the definition in s. 4, *ante*, p. 7.

(*g*) See s. 51, *ante*, p. 119.

(*h*) This word is peremptory; nevertheless, some discretion must be left to the authority as to their action, and as to when they will sell. It must be noticed that the Lands Clauses Consolidation Acts, referred to in the next section, provide for the sale of superfluous lands, but it would appear that the section in the text supersedes that provision, interposing the control of the L. G. B. (now M. of H.). The former expressed the view that the Lands Clauses Consolidation Act, 1845, s. 128 (see App. I., *post*, Vol. II.), which gives a vendor a right of pre-emption over land sold to a local authority, was not superseded by the present section, and was not restricted to cases of compulsory purchase. Disposal of surplus land. Right of pre-emption.

In the case of lands purchased by means of borrowed money, the M. of H. practically bring pressure to bear upon an authority to dispose speedily of so much as is not required for the actual improvement, by requiring the estimated cost to be divided, and assigning a short term (usually five years) for the repayment of that part of the loan which represents the estimated value of the surplus property.

In consequence of the wording of the section it would seem to be legally impracticable for a district council to borrow money for the *net* cost of an improvement, *i.e.*, for the estimated difference between the cost of land purchase and the amount to be immediately realised by resales. The council should borrow for the whole cost on terms which will admit of sale proceeds being applied at short notice towards repayment.

But for the provisions of the section an authority could not, as it seems, have sold any of the lands which they had acquired; see *Tepper* v. *Nicols* (1864), 18 C. B. (N.S.) 121.

Land acquired by an authority under this Act for a definite purpose may, in the interval before it is required for such purpose, be used in any lawful manner which does not substantially interfere with its immediate use, when so needed, for the purpose for which it was acquired; it is not necessary that during such interval the land should be kept in the same state in which it was when acquired (*Att.-Gen.* v. *Teddington U. D. C.*, [1898] 1 Ch. 66; 61 J. P. 825). Interim user of land.

But an authority must be careful not to permanently apply the land so purchased to any other purpose than that for which it was acquired, except with due licence properly obtained. Where a corporation under a local Act obtained a piece of land for the purpose of public recreation, they were restrained by injunction from holding a fair and exhibition of cattle upon it (*Att.-Gen.* v. *Southampton* (*Mayor, etc. of*) (1859), 29 L. J. Ch. 282; 1 L. T. 155). See also *Att.-Gen.* v. *Sunderland* (*Mayor, etc. of*), *ante*, p. 371, where a corporation were allowed to build a museum and library on a part of a public park, but were restrained from building a council chamber and offices thereon; *Williamson* v. *Sunderland* (*Mayor, etc. of*) (1892), 9 T. L. R. 143, and *Stourcliffe Estate Co., Ltd.* v. *Bournemouth Corporation*, on p. 370, *ante*. Permanent user for other purposes.

A local authority had purchased compulsorily under this Act and a Provisional Order certain land for the purposes of sewage disposal, some additional land adjoining being also purchased shortly afterwards. A part of the area thus acquired was eventually found to be unsuitable for sewage disposal, and the council, instead of selling it, proposed to erect on it a small-pox hospital. The L. G. B., purporting to act under s. 175, gave a direction that the land should be retained by the council as a site for a small-pox hospital. The Court of Appeal decided that the language of s. 175 was not wide enough to empower the Board, in directing that the land should not be sold, to authorise its permanent appropriation to a purpose wholly inconsistent with that for which it was acquired (*Att.-Gen.* v. *Hanwell U. D. C.*, [1900] 2 Ch. 377). As to how far an authority are bound by the plans deposited in order to obtain a Provisional Order, see *Bradshaw* v. *Bray U. D. C.*, and cases cited therewith, *post*, p. 421. The land in the *Hanwell Case*, *supra*, was purchased

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compulsorily, but the following case shows that the principle applies equally to land purchased by agreement.

An authority, under a Provisional Order which incorporated the Electric Lighting Acts, purchased land by agreement for the purpose of erecting thereon works for generating electricity. At the time of the purchase they had decided to utilise part of the land as a site for a refuse destructor, the intention being that the surplus heat produced by the consumption of refuse should be used in aid of the generating machinery. There is power under this Act to acquire land for the erection of a refuse destructor, but the court held that the land was not in fact acquired in exercise of the powers of the Act; that the erection and use of the destructor was not ancillary to the supply of electricity; and that, therefore, what the authority proposed to do was *ultra vires* (*Att.-Gen.* v. *Pontypridd U. D. C.*, [1906] 2 Ch. 257; 70 J. P. 394). The question whether an authority, having powers to acquire land under two different statutes for two different purposes, can, by an exercise of their combined powers, acquire land as a whole, partly for the one purpose and partly for the other, without distinguishing the parts acquired for each, was left open; see *per* ROMER, L.J.

In view of the decisions referred to above, it would seem that even where a conveyance is in general terms, those terms cannot widen the range of purposes for which land was acquired so as to cover objects not within the contemplation of the council.

In 1870 a corporation accepted an offer to sell them at an undervalue a piece of land containing fifty-three acres on condition that they should appropriate forty acres for a public park and recreation grounds, and the land was conveyed, the Treasury sanctioning a mortgage for the purchase-money. In 1910 the parks committee approved a scheme of the streets committee for relieving the congestion of a busy road, bounding one side of the park, by throwing 5,180 square yards of the park into the road. The scheme involved the felling of 133 trees in the park. In an action by a ratepayer for an injunction, it was held that the real transaction in 1870 embodied an intention of appropriating forty acres for park purposes and keeping the remainder free from trees, and free to be used for any other purpose. The whole fifty-three acres were not subject to a statutory trust. The corporation had not by permitting the public enjoyment of the whole of the land abandoned by dedication their right to dispose of part of it for other purposes. The work proposed was calculated to increase the pleasurable use of the park, and with regard to the cutting of trees it was a matter for the corporation to decide. Accordingly an injunction was refused (*Att.-Gen.* v. *Bradford Corporation* (1911), 55 Sol. J. 715; 75 J. P. 553).

Reference, however, must now be made to s. 95 of the P. H. A., 1907, *post*, under which the M. of H. have power to sanction the use (subject to conditions) of land for purposes other than those for which it was acquired. And for statutes authorising the appropriation for a particular purpose or for general purposes of land already belonging to an authority, see the Education (Administrative Provisions) Acts, 1907, s. 1, and 1909, s. 5; the Baths and Washhouses Act, 1846, s. 24; the Recreation Grounds Act, 1859; the Open Spaces Act, 1887, s. 7; the Burial Act, 1854, s. 11; the Housing of the Working Classes Act, 1890, s. 57 (3).

(*i*) It is difficult to define the precise powers vested in the Board (now M. of H.) by these words, having regard to the *Hanwell Case* (see note (*h*) above). In an ordinary case where a council propose to dispose of surplus lands, the M. of H. state that they do not propose to give any directions which will preclude the council from selling the lands in accordance with the requirements of the section.

(*k*) These words do not necessarily imply that the sale must be by public auction. A sale by private treaty after advertisement would seem to satisfy the section. The section, according to JOYCE, J., in *Scarborough Corporation* v *Cooper*, p. 414, *ante*, contemplates "a sale for a sum of money in cash."

Application of proceeds of sales.

(*l*) The official view is that if principal moneys cannot be at once repaid, the sale proceeds should be invested as a sinking fund in securities prescribed by s. 234 as amended by the Trustee Acts, and applied periodically in discharge of sums due to the lenders. There is apparently no infringement of the Act if the amount is absorbed by one such payment, with the result that the ratepayers for the current year obtain the full benefit of the sale.

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A mortgage was created on the district fund of a borough, under an Act not expressly incorporating this section :—*Held*, that the section could not apply unless there were surplus lands, and that, as it was not shown that there were any, the mortgage must be treated as pure personalty. Whether if there had been surplus lands, the mortgage must not still have been treated as pure personalty, on the ground that, as the lands were directed by statute to be sold, the doctrine of election was excluded, so that the mortgagee had no interest in anything but money, *quære*. Whether a charge which gives the holder no right against anything except money which has gone as money into a particular fund can ever be treated as giving an interest in real estate because the money has come from real estate, *quære* (*In re Thompson ; Bedford* v. *Teal* (1890), 45 Ch. D. 161).

(*m*) In *Jersey* (*Earl of*) v. *Uxbridge R. S. A.*, [1891] 3 Ch., at p. 194, STIRLING, J., said : "The words 'general purposes' were referred to as showing that the proceeds of sale might be carried to the credit of the fund out of which general expenses are payable, but it seems to me that the language does not necessarily lead to this conclusion. The rate levied for special expenses is applicable for the general purposes of the Act so far as regards the contributory place in which it is levied. It could hardly be disputed that in the present case the proceeds of sale might be applied in paying off the mortgage of the 10th of February, 1888, which is charged on the rates of the parish of Norwood, and, if this be so, then under s. 175, in the absence of any charge, the proceeds would have to be carried to the credit of the same rate."

It will be observed that if there is any existing debt under the Act the sale proceeds must be applied towards its discharge. This provision must sometimes work inequitably, *e.g.*, when the land has been purchased out of revenue.

Regulations as to purchase of land.

176. With respect to the purchase (*a*) of lands (*b*) by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,)

(1) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (*c*), shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 (*d*) :

(2) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—

Publish once at the least in each of three consecutive weeks (*e*) in the month of November, in some local newspaper circulated in their district (*f*), an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan (*g*) of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands (*h*) that they require ; and shall further

Serve a notice (*i*) in the month of December on every owner or reputed owner (*j*), lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents dissents or is neuter in respect of taking such lands :

(3) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they

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think fit, present a petition (*k*) under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires (*l*):

(4) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same (*m*), or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no Provisional Order shall be made affecting any lands without the consent of the owners, lessees and occupiers thereof (*n*):

(5) After the completion of such inquiry the Local Government Board may, by Provisional Order (*o*), empower the local authority to put in force, with reference to the lands referred to in such order (*p*), the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit; and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served (*q*):

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November (*r*), but in either of such last-mentioned cases an inquiry preliminary to the Provisional Order to which such notices refer shall not be held before the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more such persons on behalf of all such persons (*s*).

Leasing not included.

(*a*) This section only applies to purchases. As to the power of an authority to take lands on lease, see the preceding section.

(*b*) See the definition in s. 4, *ante*, p. 7.

Protected lands and rights.

By ss. 327, 332, nothing in this Act is to be construed as authorising a council to interfere with the works and property of certain authorities and companies, or to injuriously affect water rights without in every case obtaining the requisite consents. This restriction has the effect of considerably curtailing the powers which are apparently given by s. 176 to facilitate the execution of improvement schemes. There are also lands of other kinds which cannot be taken, even if a

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Provisional Order is obtained, without a certain procedure, and it will, therefore, be convenient to mention the practice of the M. of H. when lands of various descriptions are scheduled by local authorities for compulsory purchase.

Crown lands.

Crown lands cannot be taken compulsorily. At the same time the M. of H. are apparently willing to insert such lands in a Provisional Order if the council obtain the assent of the Government department concerned to the proposed scheme. A special protective clause is, however, usually inserted in the Order.

Canal and railway property.

The property of canal companies is specially protected from interference by s. 327, but if the consent required by that section is obtained, the Ministry will probably insert the required lands in their Order.

Railway lands are not the subject of special provision in the Act (except in such matters as are referred to in s. 157), but the Ministry usually require the assent of the company.

Churches, chapels, and burial grounds.

The Ministry decline to issue a Provisional Order purporting to give compulsory powers in respect of consecrated lands. Possibly a council may be able to effect their purpose by procuring a faculty. In *St. Anne, Limehouse* (1915), 31 T. L. R. 539, a faculty was authorised to acquire a strip of a disused burial ground for widening a road. The court adopted the usual procedure and granted a user of the land but declined to decide whether the local authority had statutory authority to acquire the freehold. Roman Catholic chapels and other places of worship not of the Established Church, and unconsecrated burial grounds, may, however, be scheduled.

If an improvement involves the disturbance of human remains a licence from the Secretary of State is required, and a provision will probably be inserted in the Order requiring this step to be taken before the lands are disturbed.

Water rights.

If water does not flow in a defined channel, and no rights other than those of the owner of the land upon which a spring is situated are involved, such land may be compulsorily acquired and with it the right to use the water arising therefrom. Where, however, water flows in a defined channel the issue of a Provisional Order and the putting in operation of the powers thereby conferred will not relieve the council from the obligation to obtain the written consents of any owners whose rights will be injuriously affected by the works. Such rights cannot be acquired compulsorily by Provisional Order. See s. 14 of the Housing, Town Planning, etc. Act, 1919, *post*, Vol. II., as to the acquisition of water rights in connection with housing schemes, and see also notes to ss. 327, 332, *post*.

Highways.

If lands required for purposes of an improvement under the Act form part of a highway, an order of justices under ss. 84 *et seq.* of the Highway Act, 1835, is required, and the issue of a Provisional Order will not relieve the council from the necessity for taking this procedure.

Parts of houses, etc.

It frequently happens that a council in connection with a scheme of improvement desire to obtain compulsory powers over part only of a property, and with this object desire a provision to be inserted in the Order depriving an owner of his power to require them to purchase the whole: see the Lands Clauses Consolidation Act, 1845, s. 92. It appears to be the practice, however, of the Ministry to refuse applications of this character.

Time limit for exercise of powers.

The L. G. B. generally declined to insert in Provisional Orders, or in Bills for the confirmation of such Orders, any provision extending the time during which the powers might be exercised: see the Lands Clauses Consolidation Act, 1845, s. 123, and note thereto. In cases where powers given over the same lands by previous Orders had been allowed to lapse, the time given was sometimes restricted to one year or two years.

Amount of land scheduled.

The Ministry are apparently willing, in cases of schemes for street improvement and construction of new streets, to include in their Order sufficient land to enable the council to obtain a good saleable frontage.

Where owners willing to sell at arbitration price.

If the owners and lessees of lands are willing to sell at a price to be fixed by arbitration, and will enter into an agreement for that purpose, a Provisional Order is not necessary.

Owners with defective title.

A Provisional Order is not necessary for the sole reason that owners cannot produce a satisfactory title. The Lands Clauses Consolidation Act, 1845, s. 75, enables a council in such circumstances to execute a valid conveyance to themselves.

Land for sewers and water mains.

It is unnecessary to obtain compulsory powers under s. 176 in connection with the laying of sewers and water mains through lands in view of the powers of a council under ss. 16 and 54. See those sections and the notes thereto.

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If lands are required as a site for a reservoir which is to hold more than 100,000 gallons of water, s. 53, *ante*, p. 127, should be complied with.

Site for reservoir. Destruction of easements.

Where houses or lands are taken under compulsory powers, easements over them enjoyed by the owners of adjoining properties not purchased may, if they interfere with the proposed use of the houses or lands taken, be obstructed, the owners being entitled to compensation. The readiest illustration is that of the right to lights, as to which see *Clark* v. *London* (*School Board of*) (1874), L. R. 9 Ch. 120; 38 J. P. 101; *Bedford* (*Duke of*) v. *Dawson* (1875), L. R. 20 Eq. 353; 39 J. P. 804; *Baker* v. *St. Marylebone* (*Vestry of*) (1876), 35 L. T. 129; 24 W. R. 848. A local education authority taking land by agreement for the purposes of the Elementary Education Act, 1870, are not liable to an action for breach of a restrictive covenant, by which the land was bound in the hands of their vendor, the only remedy of the covenantee being compensation under the Lands Clauses Consolidation Act, 1845, s. 68 (*Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182). See also *Long Eaton Recreation Grounds Co.* v. *Midland Rail. Co.*, [1902] 2 K. B. 574; 67 J. P. 1. This subject is too wide to be treated in the present Work. The various sections of the Lands Clauses Acts in App. I., *post*, Vol. II., and the notes thereon, may be consulted; but reference must be made to special treatises on these Acts, such as Browne and Allan on the Law of Compensation and similar works.

Trespass on land not acquired.

A corporation who had acquired land compulsorily for waterworks purposes, in course of constructing a reservoir therein at a depth of 123 feet below the surface, inadvertently carried a heading 18 feet by 6 feet for a distance of 42 feet beyond their boundary into the plaintiff's land. The excavation was made for the purpose of stopping a fissure in the soil, which might have caused a leak in the reservoir, and it was filled up with concrete and brickwork, the surface of the plaintiff's land being in no way interfered with. The plaintiff claimed a mandatory order against the defendants to restore the land to its former condition. The cost of doing this would have amounted to £1,000. Before action the defendants offered to pay £100 by way of damages, and before delivery of the defence paid £10 into court. JOYCE, J., held that, having regard to *Shelfer* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287, the court had a discretion to give damages in lieu of an injunction; that it was a case for damages, and that the proper amount was £100. *Mayfair Property Co.* v. *Johnston*, [1894] 1 Ch. 508, does not, he said, lay down a rule that the measure of damages in such a case is the amount which it would cost to restore the land to its former condition (*Riley* v. *Halifax Corporation* (1907), 71 J. P. 428; 97 L. T. 278).

Lands outside district.

If the local authority intend to apply for a Provisional Order to enable them to purchase compulsorily lands outside their district for sewage disposal purposes, waterworks, or a cemetery, they will probably find it convenient to satisfy the requirements of section 32 or section 54 of the Public Health Act, 1875, when they are taking the necessary proceedings for the Provisional Order. Delay at a subsequent stage of the proceedings will be saved in this way.

Incorporated enactments.

(*c*) 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18. The first-mentioned has been amended by 46 & 47 Vict. c. 15. All these Acts are printed in App. I., *post*, Vol. II.

(*d*) 8 & 9 Vict. c. 18, contains two sets of sections: one applicable to agreements which enable persons under disability to sell and convey; the other to cases where no agreement can be arrived at. An authority may act under the former set by the operation of this section, but they cannot avail themselves of the latter without observing the formalities prescribed by the latter part of this section.

Superfluous land.

8 & 9 Vict. c. 18, s. 127, requires the sale, within a certain time, of superfluous land, *i.e.*, land not required for the purposes of the undertaking, a definition whereof is given by Lord CAIRNS in *G. W. Rail. Co.* v. *May* (1874), L. R. 7 H. L. 283, at p. 292; 39 J. P. 54. If no sale is effected within the prescribed time, the land vests in the owner of the adjoining land. The section was not incorporated with the P. H. A., 1848, s. 84, and some doubt existed as to whether it applied to land acquired under 21 & 22 Vict. c. 98, and subsequent Acts; but this doubt is now removed. As to the provisions of this Act for the sale of land which is not required for the purposes for which it has been acquired, see the last section.

Compulsory purchase: for

In a case which arose under the corresponding sections of the Education Act, 1870, a school board served on R. a notice to treat, all the previous preliminaries

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having been complied with. Prior, however, to the service of the notice to treat and to the passing of the Confirmation Act, the board had entertained and adopted, subject to the sanction of the Education Department, a proposal from one B., a neighbouring landowner, for exchanging a portion of the land to be acquired by the board from R. for a piece of B.'s land, he undertaking to form the land so to be conveyed to him by the board into a public road. There was evidence to show that such road, when made, would be advantageous to the school intended to be erected. It was held, on motion by R. for an injunction to restrain the board from putting in force their statutory powers with respect to so much of the land comprised in the notice to treat as they proposed to convey to B., that the board were justified in the course they had taken, and could, if they obtained the sanction of the Education Department, carry out the proposal (*Rolls* v. *London School Board* (1884), 27 Ch. D. 639). In *Batson* v. *London School Board* (1903), 67 J. P. 457; 20 T. L. R. 22, CHANNELL, J., held that if the purpose for which land is proposed to be taken is *ultra vires* a local authority may be restrained from taking the land, notwithstanding a Provisional Order has been obtained.

authorised purposes only.

In a recent case under Michael Angelo Taylor's Act the bona fides of a local authority and their motive for exercising their compulsory powers were called in question. The London County Council obtained power to construct a tramway along a certain street. The proposal had been opposed by the H. Borough Council on the ground that the street was too narrow for the purpose; but, after negotiations, this opposition was withdrawn, and an agreement was entered into between the councils by which the street was to be widened, and the borough council agreed to assist the county council in obtaining consents to the widening. The county council could not come to terms with certain owners, and, having no compulsory powers of purchase, they requested the borough council, in pursuance of their agreement, to put into force their compulsory powers under Michael Angelo Taylor's Act. The borough council accordingly passed a resolution that these powers should be exercised, and formally adjudged that the land in question "projects into, obstructs or prevents the council from . . . altering, widening, or extending the said street." Notice to treat was formally served; and an action was brought by the owners to restrain the council from exercising their powers on the ground that this was not a bonâ fide adjudication by the council, and that the proposed improvement was not within the meaning of the Act. It was held, upon the facts, that there was an honest and bonâ fide determination on the part of the council that it was expedient to widen the street, and none the less so because it was occasioned by the introduction of the tramway by the county council (*Parry* v. *Hammersmith Borough Council* (1904), 69 J. P. 35; 92 L. T. 161). The good faith of local authorities was also unsuccessfully challenged in other recent cases, viz., in *Pescod* v. *Westminster Corporation*, [1905] 2 Ch. 475; 69 J. P. 387; *Westminster Corporation* v. *L. & N. W. Rail. Co.* [1905], A. C. 426; 69 J. P. 425. See *Rebbeck* v. *Bournemouth Corporation* (1902), Times, March 17th, where a question as to the bona fides of a notice to treat was raised; and see also *Marquess of Clanricarde* v. *Congested Districts Board for Ireland* (1915), 79 J. P. 481; 49 Ir. L. T. 42.

(*e*) The advertisement must appear in three consecutive weeks, but it is not necessary that a week should elapse between two insertions (*Aberdeen (City of)* v. *Watt* (1901), 3 F. 787). Thus, if the advertisement appear on a Saturday it can appear again on the following Monday. The point is sometimes of importance when a month ends in the middle of a week.

The advertisements.

(*f*) It must appear three times in one and the same newspaper.

(*g*) The undertaking in respect of which the lands are required must be shown on the plan, and the annual "Instructions" of the Ministry of Health as to preparation of the plan should be closely followed.

The deposited plan.

As to the delineation of lands upon deposited plans, see *Dowling* v. *Pontypool, etc. Rail. Co.* (1874), L. R. 18 Eq. 714. If the Act confirming a Provisional Order gives power to take more lands than those mentioned in the notices, it appears that such additional lands may be taken (*In re Huddersfield Corporation and Jacomb* (1874), L. R. 10 Ch. 92).

An Irish district council prior to obtaining a Provisional Order Confirmation Act enabling them to acquire land compulsorily for the purposes of the Housing

How far plan conclusive.

Note to Section 176.

of the Working Classes Act, 1890, and for widening streets, duly deposited plans, one of them being a ground-plan of forty-five cottages proposed to be built, showing also a proposed playground and a proposed approach fifty feet wide. The plans were referred to in the Act for the purpose of description, but the Act contained no provision requiring the works to be carried out according to the plans. It was held that the plans were only incorporated in the Act for the purpose of identifying the land to be acquired; that the defendants were, therefore, not bound to adhere to the representation of intention shown on the plan as to the proposed number of cottages, and the playground and approach; and that they could not be enjoined while they kept within the purposes mentioned in the Act (*Bradshaw* v. *Bray U. D. C.*, [1907] 1 I. R. 152). And see also *N. B. Rail. Co.* v. *Tod* (1846), 12 Cl. & F. 722; *Att.-Gen.* v. *G. E. Rail. Co.* (1873), L. R. 6 H. L. 367.

(*h*) It is advisable to state the quantity of land in acres or square yards with the words "or thereabouts," in addition to giving a description of the lands.

Notices and their effect.

(*i*) See s. 267, *post*, as to how such notices are to be served in general, and the proviso to this section as to the service on commoners. It has been held that the giving of this notice does not bind the authority to proceed, and that their omission to take the lands specified in the notice gives no right of action to the owner, even after confirmation of the Provisional Order (*Burges* v. *Bristol Sanitary Authority* (1886), 50 J. P. 455; and see *Burr* v. *Wimbledon L. B.*, W. N. (1887) 155). See also note (*g*), *supra*.

Persons to be served.

(*j*) For one meaning of the word *owner*, see s. 4, *ante*, p. 8, though that is not the only meaning to be adopted in construing this section. In 8 & 9 Vict. c. 18, s. 3, the word *owner* is "understood to mean any person or corporation who under that or the special Act would be enabled to sell or convey land for the purposes of the undertaking." And under this section it was held that notice ought to be given to persons known to be mortgagees of the property to be taken (*Martin* v. *L. C. & D. Rail. Co.* (1866), L. R. 1 Ch. 501). But, *quære*, who is meant by a *reputed* owner or *reputed* lessee? And will a notice upon such reputed owner or lessee be available where there is a real owner or real lessee who is not served? It seems that the notice must be served upon the owner, lessee, and occupier. But if the local board can select any person as the reputed owner or reputed lessee there may often be a failure of due notice to the proper parties. 8 & 9 Vict. c. 18 does not refer to reputed owners. However, the poor rate of every parish contains a column for the owner of the property assessed, and the overseers fill in the column with a name which often represents the reputed owner—that is, the name of a person who is believed by them to be the owner.

Attention should be paid to the ownership of highways and streets, for there is no power to take streets without notice such as is given by the Railways Clauses Act, 1845, s. 16, as to which see *Souch* v. *East London Rail. Co.* (1873), L. R. 16 Eq. 108; 37 J. P. 644. Apart from statutory provisions as to "vesting" the presumption is that the soil belongs to the owners of adjoining lands. And even where the actual street is vested in an urban council or county council, *semble*, the owner of the subsoil should receive notice: *cf. Mayor, etc. of Tunbridge Wells* v. *Baird*, on p. 104, *ante*.

A notice served upon one of several joint owners who acts for the rest appears to be sufficient.

As to the right of a local authority to a way of necessity to lands compulsorily acquired by them for the purposes of a sewage farm, see *Serff* v. *Acton L. B.* (1886), 31 Ch. D. 679.

The petition.

(*k*) As the petition must mention the purport of the answers received from the owners, etc. it should not be presented until a reasonable time has elapsed since the notices were served. The petition should contain a schedule giving the lands proposed to be taken in a form corresponding with the book of reference. See M. of H. "Instructions."

Combination of authorities.

Two or more local authorities cannot jointly petition for a Provisional Order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Either each authority must present a separate petition in respect of the particular lands which they require, or the several local authorities must combine under s. 285, *post*, for the purpose of carrying the proposed scheme into execution,

and a petition must be presented by one of them with regard to all the land required. If the latter course is taken, an agreement under the section should be entered into before application is made for the Provisional Order, and a copy of the agreement should accompany the application. **Note to Section 176.**

(*l*) Circular letters and instructions are annually issued to local authorities by the Ministry of Health relative to applications for Provisional Orders under this and other Acts. Those applicable to orders under s. 176 explain in detail the provisions of the statute and the requirements of the Ministry, and should be carefully studied by the officers of a council intending to apply for such an order. For the latest circular and instructions, see App. II., *post*, Vol. II. Proofs required.

It is also necessary to comply with the Standing Orders of Parliament applicable to such Provisional Orders, set out in the "Instructions," and to furnish the Ministry with proof of the fact.

See s. 297, *post*, and the notes thereto, as to petitions against the making of a Provisional Order and the procedure generally.

(*m*) This dismissal may take place without local inquiry, as the Ministry may consider that upon the petition, and the opposition to it, no order should be issued.

(*n*) These words were incorporated from 21 & 22 Vict. c. 98, s. 75, but their meaning is not quite obvious. It would appear that when there is consent, no Provisional Order is necessary. But it is believed that cases occur where parties will not consent to a sale, but will not oppose a Provisional Order, and consequently may waive an inquiry. There are also cases of disability to sell.

(*o*) As to this, see s. 297, *post*.

(*p*) See *In re Huddersfield Corporation and Jacomb*, in note (*g*), *ante*.

(*q*) When only a few copies are required, the Ministry will probably supply them, but when a considerable number are required, an arrangement can be made with the Government printer for the supply of the copies at a reasonable rate. The statute does not render this service a preliminary to the introduction of the confirming Bill. Probably, however, the Bill might be stayed by Parliament if it were shown that no copy of the order had been served in time to allow a petition to be presented against it within the appointed time, as s. 297 (7), *post*, only makes the order primâ facie evidence that all proceedings previous to the making of the order have been duly taken. Copies of order.

(*r*) The advantage of taking early proceedings is that if a mistake occurs, there is time to take fresh proceedings without the loss of a year.

(*s*) See the provisions of 8 & 9 Vict. c. 18, ss. 102—107, as to compensation for common lands. Common lands.

177. Any local authority may, with the consent of the Local Government Board, let (*a*) for any term any lands (*b*) which they may possess, as and when they can conveniently spare the same (*c*). Power to let lands.

See s. 95 of the P. H. A. Amendment Act, 1907, *post*.

See s. 29 as to the letting of sewage lands. No consent is required under that section.

The present section is not restricted in its application to lands acquired or vesting in the authority under this Act. In view, however, of such decisions as those of *Att.-Gen.* v. *Teddington* and *Att.-Gen.* v. *Hanwell* (see notes to s. 175), there are fewer instances than formerly in which this section is found to be of any service to local authorities.

(*a*) See also s. 175 and note (*h*) thereto as to the powers of a district council for dealing with land pending its use for the purpose for which it was acquired. In a case (since the *Teddington* decision referred to in that note) in which a rural council proposed to let certain land to a parish council for allotments until it was required for the treatment of sewage, the L. G. B. expressed the opinion that such a temporary use of the land was not such a demise as is contemplated by s. 177. It seemed to the Board to be competent to the district council in their capacity of owners of the land, apart from any express statutory authority to exercise such powers of a landowner as would suffice to licence the use of the land for allotments under conditions acceptable Temporary lettings.

Note to Section 177.

to the parish council. Such a licence would not require sanction on the part of the Board. In another case in which an urban council proposed to let a piece of land acquired for pleasure ground purposes for use as an addition to the gardens of some private houses, the Board stated that they gathered that it was not intended that any buildings or other structures, which would interfere with the ultimate use of the land for recreation ground purposes, should be erected upon the land, and that they assumed that the terms of the letting would be such as to permit of the use of the land for the purpose for which it was acquired at such notice as the council would readily be able to give. Under such circumstances it appeared to the Board that (under the *Teddington* decision) the proposal could be carried into effect by the council without any sanction or consent on the part of the Board.

Sporting rights.

A local authority succeeded in obtaining consent to the letting of sporting rights over the whole of the lands acquired for a sewage farm, in addition to the letting of parts of the land.

Long leases.

The M. of H. require strong grounds to be shown when it is proposed to grant a long lease of lands. If lands can be conveniently spared for an indefinite period they must frequently be in the nature of surplus lands which under s. 175 it is the duty of the council to sell.

Non-exclusive and occasional lettings.

Consent is not required when there is no exclusive occupation, as, for instance, when a district council let a room in their office for one day a week.

Failure to obtain necessary consent.

In *Canterbury Corporation* v. *Cooper* (1909), 73 J. P. 225; 100 L. T. 597, it was discussed, but not decided, whether a lease granted under the Municipal Corporations Act, 1882, ss. 108, 109, without the necessary consent of the L. G. B., was void or voidable.

(*b*) See the definition in s. 4, *ante*, p. 7.

Failure of purpose for which land acquired.

(*c*) The authority must remember that *they* cannot change the purpose for which they have acquired the lands. It will not, therefore, be "a convenient sparing" of the lands within the meaning of the section, if they simply abandon the purpose for which the lands were required. The Act does not provide for the failure of the purpose.

Reference should be made to the Municipal Corporations Act, 1882, s. 143, which enables surplus rents in a borough to be applied towards the costs of the improvement of the borough under the Public Health Acts. See upon this, *Att.-Gen.* v. *Birmingham* (*Corporation of*) (1866), L. R. 3 Eq. 552.

Provision for lands belonging to the Duchy of Lancaster.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855 (*a*), the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855 (*a*).

(*a*) The statute referred to is 18 & 19 Vict. c. 58.

ARBITRATION (*a*).

179. In case of dispute as to the amount of any compensation (*b*) to be made under the provisions of this Act (except where the mode of determining the same is specially provided for (*c*)), and in case of any matter which by this Act is authorised or directed to be settled by arbitration (*d*), then, unless both parties concur in the appointment of a single arbitrator (*e*), each party shall appoint an arbitrator to whom the matter shall be referred (*f*). Mode of reference to arbitration.

(*a*) The Arbitration Act, 1889, s. 24, provides that that Act—for which see App. I., *post*, Vol. II.—shall apply to every arbitration under any Act passed before or after its commencement as if the arbitration were pursuant to a submission, except in so far as it is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised thereby. While, therefore, the Arbitration Act, 1889, will not repeal any of the provisions of this or the following sections, it will apply, in so far as it is not inconsistent, to arbitrations under this Act. Application of Arbitration Act, 1889.

When a dispute as to compensation arises out of the compulsory acquisition of land, *i.e.* land or water, or any interest in land or water, or any easement or right in, to, or over land or water, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, Vol. II., must now be consulted. Application of Acquisition of Land (Assessment of Compensation) Act, 1919.

(*b*) It was formerly held that there must be a dispute only as to the amount of compensation and not as to the liability to pay it, and that a mere denial of liability by the authority was enough to suspend the right to proceed by way of arbitration (*R.* v. *Burslem L. B.* (1859), 28 L. J. Q. B. 345; *Bradby* v. *Southampton L. B.* (1855), 4 El. & Bl. 1014; 19 J. P. 644. And see *R.* v. *Metropolitan Commissioners of Sewers* (1853), 1 El. & Bl. 694). These cases, however, were reconsidered in *Brierley Hill L. B.* v. *Pearsall* (1884), 9 App. Cas. 595; 49 J. P. 84, where it was decided that a person who claims compensation for damage sustained by reason of the exercise of powers given by the Act, is entitled under s. 308 to have the amount of compensation determined by arbitration in manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration in order to obtain an award as to the fact of damage and the amount of compensation. This decision renders it unnecessary to do more than mention *Burgess* v. *Northwich L. B.* (1880), 45 J. P. 256; 37 L. T 355 (reported on another point, in 6 Q. B. D. 264), and *Uttley* v. *Todmorden L. B.* (1874), 44 L. J. C. P. 19; 39 J. P. 56). In the former a motion for a rule *nisi* to set aside an award on the ground that there was a dispute as to liability was dismissed, and in the latter an action was brought on an award when the liability was disputed. Subject of dispute.

(*c*) See, for example, s. 308, *post*, when the dispute may be referred to a court of summary jurisdiction. Special provisions.

(*d*) See ss. 22, 52, 61, 150, *ante*, and ss. 308, 328, 333, *post*.

(*e*) The Arbitration Act, 1889, s. 5, enables the court to appoint an arbitrator where a submission provides for reference to a single arbitrator "and all parties do not after differences have arisen concur in the appointment of an arbitrator." A contract between an authority and a contractor provided for the reference of differences to a single arbitrator. A difference having arisen, the contractor made proposals to the authority for the selection of an arbitrator, but they would not proceed with such selection. Thereupon the contractor served the authority with written notice "to concur in the appointment of a sole arbitrator in the matter." It was held that the notice given was a sufficient notice within s. 5 (*In re Eyre and Leicester (Corporation of)*, [1892] 1 Q. B. 136; 56 J. P. 228). It may be stated as a general rule that, where the conditions exist under which the section is applicable, the court or judge has no discretion to refuse to appoint an arbitrator (*ibid.*). Appointment of arbitrator by court.

(*f*) See, however, s. 181, p. 432, *post*, as to referring small claims to a court of summary jurisdiction.

Section 180.

Regulations as to arbitration.

180. With respect to arbitrations under this Act (*a*), the following regulations shall be observed; (that is to say,)

(1) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal (*b*):

(2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same (*c*):

(3) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation (*d*):

(4) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing (*e*) by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties:

(5) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if such party fails so to do for the space of seven days after notice in writing (*e*) from the other party in that behalf, the remaining arbitrator may proceed ex parte; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made:

(6) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose (*f*), the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made:

(7) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint (*g*) by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire (*h*):

(8) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly

appointed by them for that purpose, the matters referred shall be determined by the umpire (*i*) :

(9) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him (*k*) :

(10) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace ; (that is to say,)

" I *A. B.* do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

A. B." (*l*).

(11) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanor (*l*) :

(12) Any arbitrator arbitrators or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred (*m*), and may examine the parties or their witnesses on oath :

(13) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire (*n*) :

(14) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto (*o*) :

(15) The award (*p*) of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference (*q*).

" Under this Act."

(*a*) When land was taken compulsorily by a council under the powers of the Lands Clauses Consolidation Acts, incorporated by s. 176, *ante*, p. 417, and an arbitration took place to determine the amount of compensation to be paid to its owner, the procedure with regard to such arbitration and the right to costs were formerly wholly governed by the provisions of those Acts, and not by this section (*Ex parte Rayner* (1878), 3 Q. B. D. 446 ; 42 J. P. 807), but see now the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, Vol. II. Moreover, some arbitrations which were formerly " under this Act," *i.e.* the P. H. Act, 1875, will now be governed by the above mentioned Act of 1919, *e.g.*, an arbitration to assess the compensation for the laying of a sewer would appear to be now governed by the last mentioned Act.

Appointment of arbitrator.

(*b*) Where a claimant agreed with a waterworks company that a person nominated by two others should be appointed arbitrator, and such person being so appointed awarded to the claimant a sum exceeding £50, the Court of Exchequer held that the latter was entitled to the costs of the arbitration, although the statutory preliminaries to a reference under the Lands Clauses Consolidation Acts had not in all respects been complied with (*Martin* v. *Leicester Waterworks Co.* (1858), 27 L. J. Ex. 432 ; see also *Collins* v. *South Staffordshire Rail. Co.* (1852), 7 Ex. 5). But where, in an arbitration under this Act, one arbitrator was appointed by the local authority under their seal and another by the claimant, but not in writing under his hand, and the arbitrators appointed an umpire, who made an award in favour of the claimant, it was held that, the provisions of the statute not having been complied

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with, the appointment of the arbitrators, and consequently their appointment of the umpire and his award were invalid, and that neither the original submission, nor the appointment of the umpire, nor the award could be made an order of court (*Gifford* v. *Bury* (*Town Council of*) (1888), 20 Q. B. D. 368 ; 52 J. P. 119).

For a form of appointment of an arbitrator by the trustees and tenant for life of settled estates to assess the compensation to be paid by an authority for making a sewer, see Key and Elphinstone, 6th ed., 1899, Vol. I., p. 168.

(*c*) The appointment if under seal must be stamped with a deed stamp (impressed) of ten shillings (Stamp Act, 1891, ss. 1, 2 ; Sched. I., "Deed"). It should recite the matter in dispute, otherwise the arbitrator can only learn it from the oral discussion.

Under the corresponding provisions of the Irish Act, it has been held by the Irish Court of Appeal that if the assent of an arbitrator be obtained prior to the execution of the document by which he is appointed, such assent is sufficient to make the appointment valid as from the date when the document is executed ; and, provided the appointment is made within the period prescribed by sub-s. (4), it is immaterial whether the document is delivered to the arbitrator before or after that period has elapsed. *Semble*, it must be delivered to him before he acts (*Douglas* v. *Belfast Corporation*, *infra*).

The submission is a reference by consent within the meaning of the Common Law Procedure Act, 1854, which is now superseded, as far as regards arbitrations, by the Arbitration Act, 1889. See *Warburton* v. *Haslingden L. B.*, *post*, p. 429, approved in *Knowles & Son, Ltd.* v. *Bolton Corporation*, *post*, p. 429.

It would appear from *Brierley Hill L. B.* v. *Pearsall*, *ante*, p. 425, that the appointment of an arbitrator does not preclude the party appointing him from afterwards contesting his liability. See also *Douglas* v. *Belfast Corporation*, [1909] 2 I. R. 30, as to an appointment made "under protest."

A submission is to be deemed to include the provisions contained in the First Schedule to the Arbitration Act, 1889 (s. 2) : but only in so far as they are not inconsistent with the text (s. 24). See the Act in App. I., *post*, Vol. II.

Revocation by death.

(*d*) As one of the parties is a corporate body, the phraseology is not quite happy. Under the P. H. A., 1848, s. 123, the appointment in the case of a local board was signed by five members of the board, and as one of them might die, the legislature provided thus against the presumed consequence of his death. No such contingency can now arise with reference to the local authority.

(*e*) See note (*c*), *supra*, as to when an appointment is deemed to be made ; and see ss. 266, 267, *post*, as to the authentication and service of notices.

A frontager disputed an apportionment under s. 150, *ante*, whereupon the local authority appointed an arbitrator and gave notice of such appointment to the frontager. The frontager, without appointing an arbitrator, withdrew his notice disputing the apportionment within fourteen days, and the authority's arbitrator continued the reference, acting as sole arbitrator. It was held that the award was a nullity, as the arbitrator had no power to act as sole arbitrator. The frontager being entitled to withdraw his notice disputing the apportionment within the fourteen days, and having done so, there was no submission to arbitration (*Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511 ; 79 J. P. 201).

(*f*) As to extending the time, see sub-s. (8), and note (*i*), thereto.

Appointment of umpire.

(*g*) In *Holdsworth* v. *Barsham* (1862), 2 B. & S. 480 ; 31 L. J. Q. B. 145, the arbitrators appointed an umpire before entering on the reference, but after the twenty-one days within which they ought by the P. H. A., 1848, s. 126, to have made their award, and it was held that such appointment was not too late. In the same case in the Exchequer Chamber (*sub nom. Holdsworth* v. *Wilson* (1862), 4 B. & S. 1 ; 32 L. J. Q. B. 289), it was held that the power to appoint an umpire continued until the expiration of the time within which they might have made their award (in this Act two months : see sub-s. (9)).

If the arbitrators cannot agree upon an umpire, there is no objection to their selecting by lot one of two persons, each of whom they both admit to be a fit person (*Re Hopper* (1867), L. R. 2 Q. B. 367). They must not, however, toss up to decide which of them shall nominate an umpire, nor must they select by lot one of two persons, each of whom is known only to one of them (*Pescod* v. *Pescod* (1888),

58 L. T. 76). The arbitrators ought to meet for the selection of an umpire; but having selected one, they need not sign his appointment in the presence of each other (*Re Hopper*, *supra*). His appointment need not be stamped unless it be by deed (*Routledge* v. *Thornton* (1812), 4 Taunt. 704). **Note to Section 180.**

(*h*) The Ministry of Health must make the appointment; and, though no time is specified, they must do so within a reasonable time. The application must be made by one of the parties, and should be accompanied by copies of the appointments of the arbitrators, and of the request to them to appoint an umpire. Some evidence may also be required by the Ministry of the failure of the arbitrators to comply with the request. The Ministry refuse to act upon an application from the arbitrators or one of them.

The arbitrators cannot appoint an umpire after the expiration of the seven days mentioned in the sub-section.

It is advisable that the request to them to appoint should be in writing.

Where no request to the arbitrators to appoint an umpire was made within the period (two months from date of submission) during which they could make an award, the L. G. B. held that the arbitrators were not at the time of the request legally in a position to make an appointment, and that no such neglect or refusal to appoint was then possible on their part as would enable the Board to appoint. Under such circumstances proceedings should be begun *de novo*.

(*i*) The authority of the umpire commences at the end of the twenty-one days, or of the extended time, in the case of a failure to make the award. This is important, for it has been a common practice for umpires to calculate the time from the date of their receiving notice of the fact that the arbitrators have failed to award: see *Skerratt* v. *North Staff. Rail. Co.* (1848), 17 L. J. Ch. 161. As to the right of a party to be heard by the umpire, see *Re Maunder* (1883), 49 L. T. 535. It is usual to arrange for the umpire to sit with arbitrators to avoid the cost of a rehearing if they fail to agree. Time for umpire's award.

Although no original limit of time is specially mentioned in the text within which an umpire must make his award, yet by analogy to the original limit fixed in the case of arbitrators, an original limit of twenty-one days from the date of the reference to him must be inferred to have been fixed in the case of an umpire, which under sub-s. (9) may not be extended beyond two months. Two arbitrators, appointed under the Act, met on January 3rd and extended the time for making their award till February 20th. On January 10th they appointed an umpire. On February 1st the arbitrators and umpire met and were attended by the parties, but one of the arbitrators retired and refused to proceed any further, and the meeting was adjourned *sine die*. On April 19th the umpire made his award. It was held that the award was made too late and must be set aside. It was also held that the date from which the twenty-one days must be reckoned was February 1st, when the arbitrators finally disagreed, and not February 20th, when their powers expired (*Yeadon L. B.* v. *Yeadon Waterworks Co.* (*In re*) (1889), 41 Ch. D. 52).

(*k*) A reference to arbitration under the Lands Clauses Acts was held to be subject to the provisions of the Common Law Procedure Act, 1854, with respect to referring back an award to the arbitrator, and to enlarging the time by the court notwithstanding the expiration of the time within which the award should have been made (*In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554; *Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 402). These cases were followed with reference to an arbitration under this section in *Warburton* v. *Haslingden L. B.* (1879), 48 L. J. Q. B. 451, a previous decision in *Kellett* v. *Tranmere L. B.* (1864), 34 L. J. Q. B. 87; 28 J. P. 742, being dissented from. It would appear, therefore, that, notwithstanding the provisions in the text, the time for making the award may be extended beyond the period of two months, as in *Ward* v. *Secretary of State for War* (1862), 32 L. J. Q. B. 53; even when the award has been made after the two months has elapsed, as in *Lord* v. *Lee* (1868), L. R. 3 Q. B. 404; *Re Warner and Powell* (1866), L. R. 3 Eq. 261; *May* v. *Harcourt* (1884), 13 Q. B. D. 688. In *Re Mackenzie and the Ascot Gas Co.* (1886), 17 Q. B. D. 114, it was held that the court could not enlarge the time for making an award under the above section beyond the period of two months; but this case, in which *Warburton* v. *Haslingden L. B.* was not cited, has since been overruled in *Knowles* v. *Bolton Corporation*, [1900] 2 Q. B. 253, where it was decided by Extension of time for award.

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the Court of Appeal that the court has power under the Arbitration Act, 1889, s. 9, to enlarge the time for making an award beyond two months from the date of the submission notwithstanding s. 180 (9). So too, under the similar provisions of the Irish Public Health Act it has been held that the court can remit an award to the umpire for his reconsideration, although the two months have expired (*In re Hurley and Queenstown U. D. C.* (1913), 47 Ir. L. T. 117).

(*l*) Compare 8 & 9 Vict. c. 18, s. 33, and see the notes thereto, in App. I., *post*, Vol. II. An umpire, appointed under this Act, failed to make the declaration and annex it to his award. One of the parties, on becoming aware of the omission, at once took steps and succeeded in setting aside the award (*Ludlow* (*Mayor, etc. of*) v. *Prosser* (1906), 70 J. P. 400).

Arbitrator's powers.

(*m*) According to *Caledonian Rail. Co.* v. *Lockhart* (1860), 3 L. T. 65; 8 W. R. 373, the arbitrator may employ an expert, and may, if he deem it necessary, consult men of science. He cannot, however, delegate his authority. See *Eastern Counties Rail. Co.* v. *Eastern Union Rail. Co.* (1863), 3 De G. J. & S. 610.

As to the damages which may be awarded, see s. 308, *post*.

The numerous decisions as to the scope of an arbitrator's jurisdiction where meat has been condemned and ordered to be destroyed by a magistrate as unfit for the food of man, and the owner of the meat claims compensation under s. 308, *post*, will be found collected in the notes to s. 117, p. 221, *ante*.

An authority under s. 16, *ante*, p. 55, served on the owner of land a notice of its intention to carry a sewer through such land. Subsequently the owner gave notice claiming compensation for the damage to be sustained by her by the construction of the works, and requiring arbitration. Both parties appointed arbitrators, but after they had met the authority withdrew its notice—the works not having been commenced—and offered to pay the owner's taxed costs up to the time of such withdrawal. The owner refused this offer and went on with the arbitration. The arbitrators awarded her £10 as compensation for the damage she had sustained, and also costs:—*Held*, that they had no jurisdiction to award either damages or costs in such circumstances (*Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279). *Semble*, however, that compensation might have been allowed for damage between the date of the notice and the abandonment if this question had been submitted (*ibid.*). And see also *Re Stoker and Morpeth Corporation*, cited *ante*, p. 428.

In that case it was held that there was a further ground for setting aside the award in that the arbitrator had determined by his award that the place was a "street" within the meaning of s. 150, *ante*.

The arbitrator may be called as a witness in any proceedings to enforce his award and can be required to state what passed before him, and what was submitted for his consideration, but he cannot be asked what passed in his own mind when he formed his decision (*Buccleuch* (*Duke of*) v. *Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 36 J. P. 724).

Costs.

(*n*) An arbitrator or umpire acting under this section must in his award deal with the costs of and consequent upon the reference which the text places in his discretion; if he fails to do so, the court will remit the award to him for the purpose of determining the question of costs (*Peake* v. *Finchley L. B.* (1887), 57 L. T. 882).

The court has no power to compel an arbitrator to submit his costs—*i.e.*, the fees payable to him—to arbitration. The proper remedy for extortionate charges by an arbitrator is (1) to apply to have his award set aside; or (2) to bring an action for the recovery of a portion of the charge; or (3) to call upon the court to compel him to make his award (*Withington* v. *Wrexham Waterworks Co.* (1884), 32 W. R. 1000). In making his award an umpire ought to specify separately the sum which he himself charges for his services, the sums similarly charged by the arbitrators, and the costs of the actual award (*In re Gilbert and Wright* (1904), 68 J. P. 143; 20 T. L. R. 164). Upon taxation of the costs of an arbitration as between the parties to the reference, the taxing master disallowed £119 of the sum paid to the arbitrators and umpire for their fees on the taking up of the award. In an action brought to recover from the arbitrators and umpire the amount so disallowed, it was held that in order to succeed the plaintiffs must show that the fees charged were unreasonable and extortionate; and, further, that the certificate of the taxing master was not evidence that the amounts disallowed by him were unreasonably charged

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(*Llandrindod Wells Water Co.* v. *Hawksley and Others* (1904), 68 J. P. 242; 20 T. L. R. 241).

A decision of the Queen's Bench that an action could not be brought for the amount of costs awarded by the arbitrator until they had been taxed, was reversed by the Exchequer Chamber (*Holdsworth* v. *Barsham*, *ante*, p. 428; approved in *Met. Rail. Co.* v. *Sharpe* (1880), 5 App. Cas. 425; 44 J. P. 716).

The costs of an arbitration under this Act are not within the third-party clauses of the Solicitors Act, 1843, s. 38, which applies only to the taxation of costs as between solicitor and client, and not to party and party costs. The party liable cannot elect to pay such costs as between solicitor and client, inasmuch as the results of that mode of taxation may be adverse to the solicitor whose bill is taxed (*In re Cowdell* (1883), 52 L. J. Ch. 246; 31 W. R. 335).

When an award under this Act has been made a rule of court in the Chancery Division, a special order to tax the costs is not necessary (*Re Clark and the Bath Corporation* (1884), W. N. 127).

Two authorities for adjacent districts agreed to carry out a joint sewerage scheme by an agreement, which stipulated that all disputes should be settled by arbitration in the manner provided by this and the preceding section. An award, given in an arbitration arising out of the agreement, awarded that one of the parties should pay to the other the costs of the reference and award, without stating the amount of such costs. Upon motion for an order directing the taxation of the costs, it was held that as the submission to arbitration had been made a rule of court, the taxing master was bound to tax the costs upon the application of the successful parties, and that it was not obligatory on them to bring an action upon the award in order to do so (*Chesterfield (Corporation of)* v. *Brampton L. B.* (1886), 50 J. P. 824).

A district council acquired land under their compulsory powers. The award as to compensation to be paid was set aside at the instance of the landowner. Upon a second award the amount of compensation was increased by fifty per cent. The arbitrator directed that the parties should pay their own costs:—*Held*, that the costs of the previous application to the court by the landowner ought clearly to be paid by the council. An order was made accordingly (*In re Surbiton U. D. C. and Upjohn*, Times, January 19th, 1899).

Under the corresponding Irish section an umpire awarded to a claimant £150 and costs. The court, on setting aside the award so far as regarded two items amounting to £137, remitted the award to the umpire for his reconsideration on the question of costs (*In re Hurley and Queenstown U. D. C.*, p. 430, *ante*).

In *Debenham* v. *King's College, Cambridge* (1884), 1 C. & E. 438, WILLS, J., held that no custom exists entitling surveyors in compulsory purchase cases to remuneration on a percentage of the sum awarded according to "Ryde's scale." See also *Faraday* v. *Tamworth Union* (1917), 81 J. P. 81, where the court refused to adopt the scale as a basis for assessing the remuneration due to a surveyor.

(*o*) That is, of either division of the High Court. The court has the same jurisdiction with respect to such a rule as in ordinary cases (*In re Harper and G. E. Rail. Co.* (1875), L. R. 20 Eq. 39). The application to make the submission a rule of court should be made *ex parte* (*Wood* v. *Birch*, W. N. (1889), p. 126; *Re Davey and the Railway Passenger's Assurance Co.* (1880), 49 L. J. Ch. 568; 43 L. T. 234). Making submission a rule of court.

When an award of compensation is made under this section, it cannot, though duly made a rule of court, be enforced by motion in the manner in which awards are usually enforced, for such an award determines amount only, and not liability; and the local authority have, therefore, the right to compel the claimant to bring an action on his award to determine the question of liability (*Re Walker and the Beckenham L. B.* (1884), 48 J. P. 264; 50 L. T. 207; *Helmore* v. *East Ham L. B.*, Times, December 13th, 1893, February 8th, 1894; and *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 60 J. P. 708, where it was held that this sub-section does not give power to enforce an award under s. 150, *ante*, p. 286, by means of an application under the Arbitration Act, 1889, s. 12). Action upon award.

(*p*) A uniform duty of ten shillings is imposed by the Revenue Act, 1906, s. 9. Stamp on award.

(*q*) These words are somewhat more emphatic than those used in the Lands Clauses Consolidation Act, 1845, ss. 25, 27, 37, but the effect appears to be the same. It was held that an award under that Act might be set aside on motion Finality of award.

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made within the time limited by the statute 9 & 10 Will. 3, c. 15, for setting aside an award under that Act (*In re Harper and G. E. Rail. Co., supra*). In the same case it was held, that though in form the umpire had no power to order payment of the amount awarded, it did not vitiate the award. As to the time within which a motion to set aside an award must now be made, see R. S. C., Order LXIV., r. 14, which provides that the application may be made within six weeks after the award has been made and published to the parties. Under the same rule the court or a judge may extend the time either before or after the same has elapsed. *Cf. Re Oliver and Scott's Arbitration* (1889), 43 Ch. D. 310. Formerly, the application might be made at any time before the last day of the sittings next after the award had been published and it was under this rule held that notice of motion given before the last day of the sittings was a sufficient commencement of an application within the rule (*Re Gallop and Central Queensland Meat Export Co.* (1890), 25 Q. B. D. 230).

A question as to the power to set aside an award under this Act was raised but not decided in *Burgess* v. *Northwich L. B.*, *ante*, p. 264.

The award is only binding on the parties to the reference. See *Tunbridge L. B.* v. *Akroyd*, *ante*, p. 313.

Claims under twenty pounds may be referred to court of summary jurisdiction.

181. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party (*a*) before a court of summary jurisdiction (*b*), but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid (*c*).

(*a*) See, however, s. 22, *ante*, p. 81, where the local authority are not allowed to exercise such an option, the power being confined to the other party when the dispute is as to the use of a sewer by an owner or occupier without the district.

(*b*) See the definition, *ante*, p. 36.

(*c*) Under the Huddersfield Improvement Act, which incorporated the Lands Clauses Act, power was given to the corporation to lay sewers in lands, making full compensation for any damage; and, where the method of recovering compensation was not provided, two justices might hear and determine the same. It was held that, though nothing was said about costs, full compensation naturally included the costs of applying to the justices (*Huddersfield (Mayor of)* v. *Shaw* (1890), 54 J. P. 724).

BYELAWS.

Authentication and alteration of byelaws.

182. All byelaws (*a*) made by a local authority under and for the purposes of this Act (*b*) shall be under their common seal (*c*); and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act (*d*): Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act (*e*).

This and the four following sections apply to all urban councils, and also to rural councils to the extent to which they are given powers by the Act for the making of byelaws, or have been invested with such powers by order of the L. G. B., or M. of H. under s. 276. The provisions have also been applied to the purposes of later Acts (see note (*b*), *post*, p. 439) under which district councils may make byelaws.

Nature of a byelaw.

(*a*) A byelaw was defined by Lord RUSSELL, C.J., in *Kruse* v. *Johnson*, [1898] 2 Q. B. 91; 62 J. P. 469, to be "an ordinance affecting the public, or some portion

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of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. . . . Further, it involves this consequence—that, if validly made, it has the force of law within the sphere of its legitimate operation."

Requirements in a valid bye-law—

A byelaw to be valid must be (1) *intra vires* the authority who makes it; (2) certain in its terms and positive; (3) not repugnant to the general law; (4) reasonable.

(1) Must be *intra vires*.

Byelaws are *ultra vires* if they impose restrictions or duties not authorised by the statute under which they purport to be made; in every case a byelaw must be so framed that its provisions come within the scope of the particular section under which it is made. In *Brown* v. *Holyhead L. B.* (1862), 32 L. J. Ex. 25; 27 J. P. 184, POLLOCK, C.B., said: "Persons empowered to make byelaws have no right to invest themselves with powers which the law will not sanction." In *R.* v. *Wood* (1855), 5 El. & Bl. 49, it was held that a byelaw directing all occupiers to remove all snow from the footpath opposite their respective premises was *ultra vires* of the P. H. A., 1848, s. 55 (in pursuance of which it purported to be made), which provided that the local board might make byelaws with respect to the removal by the occupier of dust, ashes, rubbish, filth, manure, dung and soil, on the ground that the byelaw applied to pure snow which was not included in the provisions of the section. See now, however, s. 44, *ante*, p. 113. See also *Waite* v. *Garston Board of Health*, p. 347, *ante*; *Wood* v. *Venton* (1890), 54 J. P. 662 (byelaw prohibiting all nets even though not injurious to fish); *Thames Conservators* v. *Kent*, [1918] 2 K. B. 272; 83 J. P. 85 (byelaws as to towing path).

In *Byrne* v. *Brown* (1893), 57 J. P. 741 n, decided under s. 172, *ante*, p. 395, it was held that the power given by the section to licence the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and to make byelaws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the qualification of such boatmen or other persons in charge, did not empower an authority to make a byelaw that proprietors of boats (not themselves acting as boatmen) must take out a licence. In *Rossi* v. *Edinburgh Corporation*, [1905] A. C. 21, conditions attached to an ice-cream vendor's licence, virtually equivalent to byelaws, were held to be *ultra vires* and an unjustifiable interference with the liberty of traders. A general power given to a canal company to make byelaws for the good government of the company, and for the good and orderly use of the navigation, was held not to authorise the making of a byelaw prohibiting Sunday navigation (*Calder and Hebble Navigation Co.* v. *Pilling* (1845), 14 M. & W. 76; 14 L. J. Ex. 223). The powers of a public body as to "good rule and government byelaws" would doubtless be construed more liberally. See *Thomas* v. *Sutters*, [1900] 1 Ch. 10; 63 J. P. 724. A power to make byelaws as to the distances at which one tramcar may follow another does not justify a byelaw that the directions of the police on duty are to be observed on the point (*R.* v. *Manchester Corporation*, [1911] 1 K. B. 560; 75 J. P. 73). Where, in pursuance of the Tramways Act, 1870, s. 46, which enables the promoters of any tramway to make byelaws for the prevention of nuisances in any carriage belonging to them, the promoters made a byelaw providing that "no person shall swear or use offensive or obscene language whilst in or upon any carriage," it was held that the byelaw was not *ultra vires* merely because it omitted such words as "to the annoyance of passengers" (*Gentel* v. *Rapps*, [1902] 1 K. B. 160; 66 J. P. 117). In *Rudland* v. *Mayor of Sunderland*, p. 336, *ante*, a byelaw made under s. 157, *ante*, p. 327, required that no person should begin to build in a new street unless and until the kerb of each footpath therein should be put in. The byelaw was held to be unreasonable, and HAWKINS, J., expressed the opinion that it was *beyond the powers* conferred on the local board because the Act did not specify that the building or other work should be done in any given time, whereas the byelaw required the kerb to be done before beginning to build. In *Leyton U. D. C.* v. *Chew*, [1907] 2 K. B. 283; 71 J. P. 355, a byelaw made under s. 157, *ante*, p. 327, required that there should be constructed in certain new streets a proper channel of a given size "either of granite cubes laid on a bed of concrete at least six inches in thickness or otherwise in a suitable manner and with suitable materials." It was contended that the byelaw was bad as being inconsistent with s. 150, *ante*, p. 286, and ss. 6 and 7 of the Private Street Works

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Act, 1892, also on the ground that it was uncertain. It was held that it was not invalid on either ground. See also *Wandsworth Borough Council* v. *Baines*, [1906] 1 K. B. 470; 70 J. P. 124 (byelaw as to removal of house refuse); *Batchelor* v. *Sturley* (1905), 69 J. P. 398; 93 L. T. 539 (litter in streets); and *Heiton* v. *M'Sweeny*, [1905] 2 I. R. 47, where it was held that a byelaw imposing on the master the duty of having a lighted lamp attached to a vehicle was not *ultra vires*, on the ground that it rendered the master criminally responsible for the acts of his servant. The Burgh Police (Scotland) Act, 1892, provided that refreshment and provision shops must not be opened between midnight and 5 a.m., and the Burgh Police (Scotland) Act, 1903, provided that town councils might make byelaws as to the hours of opening and closing ice-cream shops, but must allow them to be opened at least fifteen hours daily; it was held that a byelaw closing ice-cream shops between 10 p.m. and 7 a.m. was neither *ultra vires* nor unreasonable (*Da Prato* v. *Partick* (*Provost of*), [1907] A. C. 153). The Burgh Police (Scotland) Act, 1892, s. 300, provided that "when bathing machines are not used, the magistrates shall have power to regulate the places and hours for both sexes bathing"; it was held that a byelaw that "no person shall bathe on or from any part of the seashore within the borough except at such places as may from time to time be appointed by the magistrates," was *ultra vires* as the statute conferred no power to prohibit bathing (*M'Gregor* v. *Dissellduff* (1906), 44 Sc. L. R. 77). See also *Moorman* v. *Tordoff*, and other cases as to foreshore byelaws, on pp. 374—375, *ante*; *Friend* v. *Brehout* (1915), 79 J. P. 25; 111 L. T. 832; *Onions* v. *Clarke* (1917), 81 J. P. 77; 116 L. T. 335 (byelaws as to fisheries); and *Smith* v. *Great Yarmouth Port Commissioners* (1919), 83 J. P. 193 (byelaws as to using fire-arm on bank of river).

In response to a request for their opinion as to whether a district council could make a byelaw for the prevention of spitting in public streets and places, the L. G. B. stated that they were unaware of any provision under which such a council are empowered to deal with the matter. The Board pointed out, however, that byelaws for good rule and government might be made by the council of a borough under the Municipal Corporations Act, 1882, s. 23, and that county councils have the same powers under the L. G. A., 1888, s. 16, and suggested that the district council should communicate with the county council as to whether the subject was one which might be dealt with under the powers referred to. See also note to s. 187, p. 445, *post*.

(2) Must be certain in its terms.

A byelaw must be certain in its terms, so as to make it clear to all whom it concerns what it requires to be done or not to be done by them. In *Kruse* v. *Johnson*, [1898] 2 Q. B., at p. 108; 62 J. P. 469, MATHEW, J., said: "From many decisions on the subject it would seem clear that a byelaw to be valid must, among other conditions, have two properties—it must be certain; that is, it must contain adequate information as to the duties of those who are to obey; and it must be reasonable." This proposition was approved by Lord ALVERSTONE, C.J., in *Nash* v. *Finlay* (1902), 66 J. P. 183; 85 L. T. 682. In that case a byelaw that "no person shall wilfully annoy passengers in the streets" was held void for uncertainty on the ground that there were other byelaws dealing with specific nuisances, and this particular byelaw did not give adequate information of what it intended to prohibit. See also *Russon* v. *Dutton* (1911), 75 J. P. 209; 104 L. T. 599. In *Scott* v. *Pilliner*, [1904] 2 K. B. 855; 68 J. P. 518, where a county council made a byelaw that "No person shall frequent and use any street or other public place, either on behalf of himself or of any other person, for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeplechases, or other competitions," Lord ALVERSTONE, C.J., said: "It seems to me that the main objection to this byelaw is that it is too wide, and that it would include cases where the sale of the paper was not in aid of street betting or of any betting at all. . . . Therefore, both on the ground of uncertainty, and mainly on the ground that it may strike at perfectly innocent sales of papers, I think that this byelaw is bad and cannot be supported." See also *Foster* v. *Moore* (1880), 4 L. R. Ir. 670; *Treasure* v. *Bermondsey Borough Council* (1904), 68 J. P. 206; 2 L. G. R. 488. In *Blackpool L. B.* v. *Bennett* (1859), 28 L. J. M. C. 203; 7 W. R. 382, a byelaw that "the several places in the district where painted boards shall from time to time be placed . . . shall be the stand for such number of carriages, etc., as shall be mentioned on such boards; and no

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driver . . . shall ply for hire . . . except on one of such stands," was held to be of sufficient certainty. See also *Slee* v. *Meadows* (1911), 75 J. P. 246; 105 L. T. 127; *Leyton U. D. C.* v. *Chew*, *ante*, p. 433. The penalty attached to the breach of a byelaw must also be certain, though the fixing of a maximum penalty with a power of mitigation will not make it bad for uncertainty (*Piper* v. *Chappell* (1845), 14 M. & W. 624; 9 Jur. 601). By s. 183, *post*, p. 440, "byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty."

(3) Must not be repugnant to the general law.

Byelaws in general may not be repugnant to the laws of the land (5 Co. Rep. 63 a), and in the text it is expressly declared that "no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act." In *Gentel* v. *Rapps*, [1902] 1 K. B. 160, at p. 166; 66 J. P. 117, CHANNELL, J., said: "A byelaw is not repugnant to the general law, merely because it creates a new offence, and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if it expressly or by necessary implication proposes to alter the general law of the land . . . Again, a byelaw is repugnant if it adds something inconsistent with the provisions of a statute creating the same offence; but if it adds something not inconsistent, that is not sufficient to make the byelaw bad as repugnant." See also hereon *L. & B. Rail. Co.* v. *Watson* (1878), 3 C. P. D. 429. In their Circular Letter of July, 1877, the L. G. B. remark that "it must always be remembered that byelaws are designed to supplement, and not to vary or supersede the express provisions of the statute law. In the Public Health Act, 1875, and in the incorporated clauses, the subjects of byelaws may sometimes appear identical with those of specific enactments. But, in all such cases, a closer examination will show that the subjects are not really identical. And, however difficult it may be to detect the points of difference in a few exceptional instances, a safe rule may be deduced from the obvious considerations that a byelaw which merely repeats a statutory enactment is, to that extent, surplusage; and that a byelaw which aims at altering or amending such an enactment is rendered invalid by the proviso in s. 182." "A byelaw must necessarily add something to the common law, otherwise it would be idle" (*R.* v. *Sadlers' Co.* (1855), 3 El. & El. 42; 2 L. T. 503: *per* MARTIN, J.; and see further on this subject, *Edmonds* v. *Watermen's Co.* (1855), 24 L. J. M. C. 124; 1 Jur. 727; *Dearden* v. *Townsend* (1865), L. R. 1 Q. B. 10; *Bentham* v. *Hoyle* (1870), 3 Q. B. D. 289; *Purvis* v. *Wimbledon Common Conservators* (1890), 62 L. T. 529; *Onions* v. *Clarke* (1917), 81 J. P. 77; 116 L. T. 335).

Where a statute imposes a penalty for a certain offence, that penalty cannot be increased by a byelaw (*Calder and Hebble Navigation Co.* v. *Pilling* (1845), 14 M. & W. 76; 14 L. J. Ex. 223). But a byelaw may be more stringent than the statute and yet not repugnant: see *Thomas* v. *Sutters*, [1900] 1 Ch. 10; 63 J. P. 724; *Batchelor* v. *Sturley* (1905), 69 J. P. 398; 93 L. T. 539; *Leyton U. D. C.* v. *Chew*, p. 433, *ante*. In *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 60 J. P. 164, it was held that a byelaw was invalid which provided that "no person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad or use any profane or obscene language." The ground of the decision seems to have been that the Town Police Clauses Act, 1847, creates a similar offence, but provides that there must be annoyance to residents or passengers. The byelaw did not require that the offence should be committed so as to cause annoyance to other people, and LINDLEY, L.J., said: "I doubt whether it is competent for the county council to make a byelaw in such wide terms." In *Thomas* v. *Sutters*, *supra*, this decision was explained by LINDLEY, L.J., [1900] 1 Ch., at p. 14. In this case a byelaw made by the London County Council dealing with betting in streets, went further than the Metropolitan Streets Act, 1867, s. 23, which dealt with the same matter, but was held to be valid on the ground that the Metropolitan Streets Act only dealt with the matter with a view to prevent obstruction, whereas the byelaw was made by the county council under their powers to make byelaws for the good rule and government of the county. And see *Hickey* v. *Hay* (1900), 65 J. P. 232. Some doubt was thrown on the correctness of the decision in *Strickland* v. *Hayes*, in the later case of *Gentel* v. *Rapps*, *supra*. See also *White* v. *Morley*, [1899] 2 Q. B. 34; 63 J. P. 550; *Burnett* v. *Berry* (No. 1), [1896] 1 Q. B.

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641 ; 60 J. P. 375 ; *Kruse* v. *Johnson*, [1898] 2 Q. B. 91 ; 62 J. P. 469. In *Collman* v. *Mills*, [1897] 1 Q. B. 396 ; 61 J. P. 102, it was held that a byelaw making it an offence for the licensed occupier of a slaughter-house to slaughter sheep in the pound of the slaughter-house, or in view of other sheep, was valid, and that under it the occupier would be guilty if an offence was committed by his servant within the general scope of his employment, although contrary to the orders of his master. See also *Heiton* v. *M'Sweeny*, p. 434, *ante*.

(4) Must be reasonable.

A byelaw must be reasonable. Prior to the year 1898 it was almost impossible to deduce from the decisions of the courts a principle or definite standard by which the reasonableness or unreasonableness of byelaws might be tested. In that year, however, the matter came up for consideration in *Kruse* v. *Johnson*, *ante*, p. 432, and the law was placed on a more satisfactory footing. The case was argued before a specially constituted court of seven judges, six of whom concurred in upholding the byelaw then in question, which prohibited any person from playing music or singing within fifty yards of any dwelling-house after being requested by a constable or inmate to desist. It was objected that the byelaw was unreasonable, because it was not confined to acts causing an annoyance or nuisance ; and the court considered *de novo* the whole question of reasonableness or unreasonableness, and the test to be applied. In the first place a distinction was drawn between byelaws made by bodies of a public representative character and those made by railway or dock companies, and other corporations of a similar character carrying on business for their own profit, though incidentally for the public benefit. "In this class of case it is right that the courts should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But when the court is called upon to consider the byelaws of public representative bodies, clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such byelaws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them, that they will be reasonably administered. . . . I do not mean to say that there may not be cases in which it would be the duty of the court to condemn byelaws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense ? If, for instance, they were found to be partial and unequal in their operation as between different classes (as to this, see pp. 437, 438, *post*) ; if they were manifestly unjust ; if they disclosed bad faith ; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say 'Parliament never intended to give authority to make such rules ; they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded ; a byelaw is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges" (*per* Lord RUSSELL, C.J., [1898] 2 Q. B. 99, 100. See also *Walker* v. *Stretton* (1896), 60 J. P. 313 ; 44 W. R. 425 ; *Clayton* v. *Peirse*, [1904] 1 K. B. 424 ; 68 J. P. 233 ; *Slattery* v. *Naylor* (1888), 13 App. Cas. 446 ; *Tuffley* v. *Tate* (1907), 71 J. P. 21 ; 96 L. T. 24 ; *Onions* v. *Clarke* (1917), 81 J. P. 77 ; 116 L. T. 335 ; and the various cases cited in *Kruse* v. *Johnson*, *supra*). In *White* v. *Morley*, [1899] 2 Q. B. 34 ; 63 J. P. 550, the principle laid down in *Kruse* v. *Johnson*, *supra*, was explained as being that "where a thing is of such a character as that it can be a nuisance, it is to rest with the local authority to say whether it shall be considered to be a nuisance in the particular locality for which they have power to make byelaws. The court can say whether it is reasonably possible for the prohibited act or thing to be a nuisance, but they cannot say it should or should not be forbidden in the particular locality." Byelaws have been held to be unreasonable in the following cases. In *Parker* v. *Bournemouth*

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Corporation (1902), 66 J. P. 440; 86 L. T. 449, the corporation had made a byelaw prohibiting any person from selling or hawking articles on the foreshore "except in pursuance of an agreement with the corporation"; the byelaw was considered unreasonable, because under it the corporation could make any agreement they chose without question, and could arbitrarily refuse a licence to any particular individual. *Pelham* v. *Littlehampton U. D. C.* (1899), 63 J. P. 88, was a somewhat analogous case, though not, strictly speaking, one of an unreasonable byelaw: the council had made byelaws as to the licensing and regulation of bathing machines, and they attached a condition to the licences granted to the proprietors of such machines providing for their revocation "at any time": the byelaws did not authorise the imposition of such a condition, and GRANTHAM, J., held that it was unreasonable that a man's licence should be liable to such arbitrary revocation, and he restrained the council from revoking the licence of a person who had exhibited advertisements on his machine contrary to a regulation made after the grant of his licence. *Cf.* with these cases, *Williams* v. *Weston-super-Mare U. D. C.* (No. 1) (1907), 72 J. P. 54; 98 L. T. 537; (No. 2) (1910), 74 J. P. 370; 103 L. T. 9; *Moorman* v. *Tordoff* (1908), 72 J. P. 142; 98 L. T. 416, and other cases on p. 374, *ante*. See also *Cook* v. *Hainsworth*, [1896] 2 Q. B. 85, as to the unreasonableness of a power to reject plans arbitrarily, unless a right of appeal be given, and see *Repton School Governors* v. *Repton R. D. C.*, [1918] 2 K. B. 133; 82 J. P. 257, where a byelaw requiring an open space at the rear of a new building was held to be unreasonable where such new building consisted of an addition to an existing building. In *Scott* v. *Pilliner*, [1904] 2 K. B. 855; 68 J. P. 518, a byelaw that "no person shall frequent and use any street or public place, either on behalf of himself or of any other person, for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeplechases, or other competitions" was held *unreasonable* as being wide enough to cover the sale of papers in general giving information which it was perfectly legal to give (*cf. Enniscorthy U. D. C.* v. *Field*, [1904] 2 I. R. 518). A byelaw imposing a penalty if a cart was so loaded that manure fell from it was held reasonable in *Ronaldson* v. *Williamson*, [1911] S. C. (J.) 102.

In *Nokes and Nokes* v. *Islington Borough Council* (No. 1), [1904] 1 K. B. 610; 68 J. P. 95; *Stiles* v. *Galinski*; *Nokes and Nokes* v. *Islington Borough Council* (No. 2), [1904] 1 K. B. 615; 68 J. P. 183, it was held that byelaws dealing with the sanitation and cleansing of common lodging houses were invalid on the ground that they imposed liability on landlords who might have no knowledge of any infringement, yet contained no provision for giving previous notice to them that the resident tenants or "keepers" had failed to comply with the byelaws.

In *Elwood* v. *Bullock* (1844), 6 Q. B. 383; *Shaw* v. *Pope* (1831), 2 B. & Ad. 465, it was held that byelaws in restraint of trade were unreasonable. So in *Toronto Corporation* v. *Virgo*, [1896] A. C. 88, it was held that a statutory power conferred upon a municipal council to make byelaws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner: see also *Lloyd* v. *Ross*, [1913] 2 K. B. 332; 77 J. P. 341, and *Sutton Harbour Improvement Co.* v. *Foster* (1920), 84 J. P. 57; 18 L. G. R. 232. In *Rossi* v. *Edinburgh Corporation*, [1905] A. C. 21, conditions attached to an ice-cream vendor's licence were held to be *ultra vires* and an unjustifiable interference with the liberty of traders. See also *Wortley* v. *Nottingham L. B.* (1870), 21 L. T. 582. But byelaws in partial restraint of trade may be reasonable, and were so held in *Gray* v. *Sylvester* (1897), 61 J. P. 807; 46 W. R. 63, where hawking was prohibited except by direction of the council, or on such part of the foreshore as might be appointed; in *Strike* v. *Collins* (1886), 50 J. P. 741; 55 L. T. 182, where separate places were set aside for wholesale and retail trading; and in *Scott* v. *Glasgow Corporation*, [1899] A. C. 470, where a byelaw provided that sale rings at a public market should not be used for private sales, or sales to any limited number of persons, or for sales in which any class of the public are excluded from bidding or buying. See also *Savage* v. *Brook* (1863), 15 C. B. (N.S.) 264; 33 L. J. M. C. 42; *Collins* v. *Wells Corporation* (1885), 1 T. L. R. 328; *Bodwic* v. *Fennell* (1742), 1 Wils. 233; *Hesketh* v. *Braddock* (1776), 3 Burr. 1847; *Clark* v. *Le Cren* (1829), 9 B. & C. 52; *Shaw* v. *Poynter* (1834), 2 A. & E. 312; *Att.-Gen. for Ontario* v. *Att.-Gen. for Canada*, [1896] A. C. 348; *Da Prato and Others*

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v. *Provost, etc. of Partick, ante*, p. 434; *Williams* v. *Weston-super-Mare*, and other cases on pp. 374, 375, *ante*.

In *Arlidge* v. *Islington Borough Council*, [1909] 2 K. B. 127; 73 J. P. 301, a byelaw was held to be unreasonable which required a landlord to do something on premises which he might not be able to enter without committing a trespass or breach of contract. *Cf.* also *Scarborough Corporation* v. *Scarborough R. S. A.* (1876), 1 Ex. D. 344, and *London C. C.* v. *Brass* (1902), 17 T. L. R. 504. In *South-end Corporation* v. *Davis* (1900), 16 T. L. R. 167, a byelaw provided that "no organ or other musical instrument worked by steam or other mechanical means, nor any steam whistle or steam horn, shall be used within the borough, provided always that this byelaw shall not apply to any locomotive or steam engine in use on any railway . . . nor to any steam whistle or steam trumpet within the meaning of the Factories (Steam Whistles) Act, 1872." CHANNELL, J., expressed the opinion that "it was unfortunate that the proviso in favour of whistles on locomotives had not been extended to small mechanical instruments in private houses. But the omission to make such a proviso did not render the byelaw unreasonable." In *Salt* v. *Scott-Hall*, [1903] 2 K. B. 245; 67 J. P. 306, a stringent building byelaw made by a rural authority was held not to be unreasonable because it reserved no discretion to the authority in exceptional cases, on the ground that upon a summons for a breach of the byelaws the justices had a discretion under the S. J. A., 1879, s. 16, to dismiss a summons in an exceptional case.

See *Mitcham Common Conservators* v. *Cox*, [1911] 2 K. B. 854; 75 J. P. 471; for a case where regulations as to golf on a common, though made under approved byelaws, were held to be invalid as giving a preference to members of a particular club or residents in a particular parish, and *Harris* v. *Harrison* (1914), 78 J. P. 398; 30 T. L. R. 532, a later case as to the same common.

A byelaw may be divisible.

A byelaw, though unreasonable in one part, may be upheld as to the rest, if it can be divided into separate and distinct parts (*Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 60 J. P. 164; and see *R.* v. *Faversham Fishermen's Co.* (1799), 8 T. R. 352; *R.* v. *Lundie* (1862), 31 L. J. M. C. 157; 5 L. T. 830; *Reay* v. *Gateshead Corporation* (1886), 50 J. P. 821; 55 L. T. 92, *per* HAWKINS, J.).

Waiver and relaxation of byelaws.

Byelaws cannot be waived by the local authority unless the byelaws themselves give the authority a dispensing power or discretion. See *Baxter* v. *Bedford* (1885), 1 T. L. R. 424; *R.* v. *Newcastle-upon-Tyne* (*Mayor of*) (1889), 53 J. P. 788; 60 L. T. 963; *In re McIntosh and Pontypridd Improvement Commissioners* (1892), 61 L. J. Q. B. 164; affirmed (1892), 8 T. L. R. 203. A local authority empowered to make byelaws has no power to sanction a contravention of byelaws properly so made; and therefore the approval by an authority of building plans which contravene the byelaws made by that authority is illegal and inoperative (*Yabbicom* v. *King*, [1899] 1 Q. B. 444; 63 J. P. 149). See also p. 329, *ante*. The presence of a discretionary clause does not render valid a byelaw which is for some reason invalid (*Waite* v. *Garston Board of Health* (1867), L. R. 3 Q. B. 5; 32 J. P. 228).

In *Salt* v. *Scott-Hall*, *supra*, CHANNELL, J., expressed the opinion that all byelaws as to buildings ought to have in them something giving someone power to say that their hard and fast rules should not apply to particular cases. It was, however, contrary to the practice of the L. G. B. to confirm byelaws reserving to a district council or their officers any discretionary power to modify the requirements of the byelaws to suit particular circumstances. The Board stated that, in their opinion, byelaws which are enforceable by penalties should be framed in such a way as to prescribe definite requirements as far as practicable for every particular state of circumstances to which the byelaws are intended to apply. See also the Board's Circular of July 25th, 1877, quoted on p. 439, *post*. The Board also stated that they were aware of the observations of the court in the case of *Salt* v. *Scott-Hall*, but although there might be individual cases in which a dispensing power might occasionally be considered useful, they felt that the reservation to local authorities of a general power of relaxing the provisions of their byelaws at will, would inevitably lead to difficulties more serious than those which the absence of such power produced. See also p. 329, *ante*.

A council are not compelled, the Board stated, to take proceedings in a case which they have reason to think comes within the Probation of Offenders Act, 1907,

s. 1, and is likely on that account to be dismissed by the justices. See also note (*e*) below. **Note to Section 182.**

See now ss. 24, 25 of the Housing, etc. Act, 1919, and the Regulations made thereunder dated Nov. 12th, 1920, authorising the temporary relaxation of building byelaws and byelaws relating to the laying out and construction of new streets.

Byelaws of a local authority are to be construed "benevolently" (*Kruse* v. *Johnson*, *ante*, p. 432); and where a byelaw is capable of two constructions, one of which will make it valid, and the other invalid, it ought to receive that interpretation which will support it (*R.* v. *Saddlers' Co.* (1863), 32 L. J. Q. B. 337, *per* Lord WENSLEYDALE; *Dearden* v. *Townsend* (1865), L. R. 1 Q. B. 10; *Leyton U. D. C.* v. *Chew*, p. 433, *ante*; and see *Vintners' Co.* v. *Passey* (1757), 1 Burr. 235; *Edmonds* v. *Watermen's Co.* (1865), 24 L. J. M. C. 124; 1 Jur. (N.S.) 727). Where a byelaw, and the Act under which it is made, are inconsistent, the former must give way; but, if possible, the byelaw must be so interpreted as to reconcile it with the terms of the Act (*Ex parte Davis* (1872), L. R. 7 Ch. 526; *Irving* v. *Askew* (1870), L. R. 5 Q. B. 208). Expressions used in byelaws have the same meaning as in the Act under which they are made (Interpretation Act, 1889, s. 31; and see *Blashill* v. *Chambers* (1884), 14 Q. B. D. 479; 49 J. P. 388). Construction of byelaws.

(*b*) Byelaws are made under ss. 44, 80, 90, 113, 141, 157, 164, 167, 169, 171, 172, 314 of this Act, and also under many other Acts. The following are the principal public general statutes under which byelaws are required to be confirmed or allowed by the M. of H.: The Markets and Fairs Clauses Act, 1847, s. 42; the Towns Improvement Clauses Act, 1847, s. 128; the Town Police Clauses Acts, 1847, ss. 68, 69, and 1889, ss. 2, 6; the Baths and Washhouses Acts, 1846, s. 34, and 1878, s. 6; the L. G. A., 1861, s. 21; re-enacted in Sched. V., *post*; the Public Health (Interments) Act, 1879, s. 2; the Public Health (Fruit Pickers) Act, 1882, s. 2; the Housing of the Working Classes Act, 1885, s. 9 (2), and 1890, s. 62; the P. H. A., 1890, ss. 20, 23, 26, 38, 40, 44, etc.; the Commons Act, 1899, s. 1; the Factory and Workshop Act, 1901, s. 15; the Open Spaces Act, 1906, s. 15; and the P. H. A., 1907, ss. 24, 51 and 92. And see the Contagious Diseases (Animals) Act, 1886, s. 9, *post*. Byelaws may also be made under other Acts, but such byelaws are not governed by the above section, see *e.g.*, the Merchant Shipping Act, 1894, s. 214, and the Advertisements Regulation Act, 1907, s. 2. The M. of H. are not the confirming authority as to byelaws made under the P. H. A., 1890, s. 13, or under the P. H. A., 1907, Part VII. Powers of making byelaws.

(*c*) It will be remembered that all local authorities are now incorporated, and consequently have a common seal. No signature of the members is required, but the affixing of the common seal should be attested by the clerk or a member, and should be done in pursuance of a resolution entered on the minutes. Sealing.

(*d*) Where byelaws repealing previous byelaws contained a proviso that such repeal should not affect anything duly done or suffered under the repealed byelaws, it was held that buildings might be erected in accordance with plans approved under the old byelaws although not conforming to the requirements of the new byelaws (*Withington U. D. C.* v. *Moore* (1896), 60 J. P. 408). See however, hereon, *White* v. *Sunderland* (*Mayor, etc. of*); *Harrogate Corporation* v. *Dickinson*, cited at p. 351, *ante*. Effect of repealing byelaws.

Where byelaws have been made in pursuance of powers conferred by statute, and the statute is afterwards repealed, the byelaws thereupon cease to have any validity unless they are dealt with by a saving clause (*Watson* v. *Winch* (1916), 80 J. P. 149; 14 L. G. R. 486).

See s. 315, *post*, which repeals previous inconsistent byelaws, and s. 326, *post*, which continues all byelaws previously duly made under any of the Sanitary Acts.

(*e*) As to "repugnancy," see note (*a*) on p. 435, *ante*. Repugnancy.

In regard to this proviso the L. G. B., in their Circular Letter of July 25th, 1877, already referred to, made the following observations:

"From this enactment several important rules may be deduced. A byelaw to be in harmony with the laws of England must be certain and determinate, and likewise reasonable, and hence arises the necessity for the use of certain and definite language in prescribing rules which are destined to have, locally, the binding effect of a statute.

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"The Board have, from time to time, had occasion to point out to sanitary authorities that the assumption in their byelaws of the power of suspending the operation of particular provisions in individual cases is open to much objection. Frequently the conditions under which this power may be exercised have been left undetermined in the byelaws; and the result is to impart a general uncertainty to provisions of which the precise scope should be clearly defined. Again, the Board have been called upon to criticise byelaws which, while purporting to lay down rules enforceable by penalties, ignore the necessary details and substitute vague conditions which render compliance with the byelaws dependent upon the approval, by the sanitary authority or their officers, of the mode of proceeding in each case. Such byelaws also are open to objection on the ground of uncertainty, and they do not fulfil the purpose for which the power of making byelaws was conferred upon sanitary authorities. The Board think that every person who, by neglect of the rules which a byelaw is intended to prescribe, may be rendered liable to a penalty is entitled to demand from those who impose such rules a clear statement of the course of action which must be followed or avoided.

"Further, a byelaw must be reasonable. The exercise of the power which the legislature has confided to sanitary authorities must frequently bring them into contact with important interests. Within certain limits, they may regulate the conduct of persons employed in certain specified callings. They may impose restrictions upon the enjoyment of individual rights and privileges. Trade and property may, under certain conditions, be affected by their action. These considerations point to the necessity for prudence and deliberation in the choice of byelaws, so that the duties and restraints which they create may not interfere oppressively with individual freedom of action.

"A byelaw under the Public Health Act, 1875, will also be invalid if it be repugnant to the provisions of that Act. Parliament has specified a variety of purposes for which byelaws may be made. For those purposes alone are byelaws authorised; and, as the Court of Queen's Bench decided in the case of *R.* v. *Wood* (1855), 5 El. & Bl. 49; *S. C. nom. R.* v. *Rose*, 24 L. J. M. C. 130; 1 Jur. (N.S.) 802 (the case of *Byrne* v. *Brown* (1893), 57 J. P. 741, may also be referred to), sanitary authorities cannot legally assume the power of making byelaws for carrying out the general objects of the Act. It follows, therefore, that every byelaw must be strictly limited with reference to the terms of the specific enactment from which its force is derived. Any attempt, by the strained construction of any such enactment, to extend the range of a byelaw should especially be avoided. But, while it is of primary importance in framing a byelaw to consider closely the language of the statutory provision which declares its purpose, the exact meaning of that language can never be safely determined without careful comparison of other enactments relating to the same or to kindred topics."

Similar provisoes are contained in the Companies Clauses Act, 1845, s. 125; the Markets and Fairs Clauses Act, 1847, s. 42; the Commissioners Clauses Act, 1847, s. 96; the Piers and Harbours Clauses Act, 1847, s. 83; the Towns Improvement Clauses Act, 1847, s. 200; and the Tramways Act, 1870, s. 46.

Power to impose penalties on breach of byelaws.

183. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence (*a*) a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty (*b*).

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaw made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

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See first note to s. 182 as to the application of these provisions to rural district councils.

This and the three following sections have been applied to byelaws made by a parish council under s. 8 (1) (d) of the L. G. A., 1894.

Continuing offences.

(*a*) For examples of continuing offences in the case of buildings, see the notes to s. 158, *ante*, p. 357. It does not appear when notice of the offence can be given, but probably it can be given without waiting for a conviction for the original offence: see *London C. C.* v. *Worley*, *ante*, p. 360. A conviction for the original offence is apparently not a *sine quâ non* to a conviction for the continuing offence (*ibid.*).

Recovery of penalties.

(*b*) "Without any express power, a penalty may by the common law be attached to a byelaw which there is power to make" (5 Co. Rep. 63 a; 2 Kyd on Corporations: *per* LUSH, J., in *Hall* v. *Nixon* (1875), L. R. 10 Q. B. 152; 39 J. P. 341). The authority should fix the precise penalty for the breach of the byelaw, limited by the amount in the text, providing, however, that the same may be reduced by the justices or court in which it is sued for. To some extent the necessity for such a provision no longer exists: see S. J. A., 1879, s. 4.

As a general rule any person may lay an information and prosecute in respect of breaches of byelaws made in the public interest (see note to s. 253, *post*, p. 560). Section 253, *post*, p. 559, however, restricts the right to take proceedings for the recovery of any penalty "under this Act"; and apart from recent legislation to be noticed presently, it is submitted that these words are wide enough to include penalties for the breach of any byelaw made under the Act (or under any later Act directed to be read with it; see *Canada Southern Rail. Co.* v. *International Bridge Co.* (1883), 8 App. Cas., at p. 727; *Charing Cross, etc. Electricity Supply Co.* v. *London Hydraulic Co.* (1914), 3 K. B. 772; 78 J. P. 305, for it has been held that an order made under a power given in a statute, is the same thing as if the statute enacted what the order directs or forbids (*R.* v. *Walker* (1875), L. R. 10 Q. B. 355); that a company incorporated under a charter authorised by an Act must be regarded as being incorporated under the Act itself (*Elve* v. *Boyton*, [1891] 1 Ch. 501); and that a light railway constructed under an order made under an Act must be regarded as having been constructed under the powers of an Act (*Wakefield and District Light Rail. Co.* v. *Wakefield Corporation*, [1907] 2 K. B. 256; 71 J. P. 254; affirmed, [1908] A. C. 293; 72 J. P. 315: see also *Willingale* v. *Norris*, [1908] 1 K. B. 57; 72 J. P. 495). It is now, however, expressly provided by the P. H. A., 1907, s. 6, that any "offences under this Act or under any byelaw made under the powers of this Act or under the powers of the Public Health Act, 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts."

Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the statute must generally speaking be followed to the exclusion of any other. Where, however, a breach of a byelaw constitutes an interference with the rights of the public, an injunction may be granted to protect those rights, notwithstanding the existence of the summary remedy; but the Attorney-General is a necessary party to such an action. See *Devonport Corporation* v. *Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; *Att.-Gen.* v. *Ashbourne Recreation Ground Co.*, [1903] 1 Ch. 101; 67 J. P. 73; *Att.-Gen.* v. *Wimbledon House Estate Co., Limited*, [1904] 2 Ch. 34; 68 J. P. 341; *Att.-Gen.* v. *Dorin*, [1912] 1 Ch. 369; 76 J. P. 181.

Confirmation of byelaws.

184. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper (*a*); nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within

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the district to which such byelaws relate, one month at least before the making of such application (*b*) ; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward (*c*).

The clerk of the local authority shall, on the application of any such ratepayer (*d*), furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy (*e*).

A byelaw required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority (*f*).

See first notes to ss. 182 and 183 as to the application of these provisions to rural district councils and parish councils.

(*a*) See circular letter of the L. G. B. in note (*e*) to s. 182. The Ministry of Health give full consideration to the *legality* as well as the *policy* of the byelaws, so as to satisfy themselves on both points ; but, of course, they cannot guarantee the former.

Notices and rules issued under duly confirmed byelaws, *e.g.*, fixing cabstands, allocating sites for preaching, etc., need not necessarily be approved by the M. of H. (*Blackpool L. B.* v. *Bennett*, *ante*, p. 434 ; *Slee* v. *Meadows*, p. 375, *ante* ; *Mitcham Common Conservators* v. *Cox*, [1911] 2 K. B. 854 ; 75 J. P. 471).

Preparation of byelaws.

For the guidance of local authorities who propose to make byelaws or regulations under the Act (*i.e.*, such regulations as are in the nature of byelaws and require approval, see *e.g.*, s. 125), the M. of H. issue Memoranda which should be obtained and carefully studied.

The L. G. B. issued a memorandum as follows :—

"1. Byelaws or regulations proposed to be made by a local authority should, for facilitating their consideration, be submitted to the Local Government Board in draft in the first instance. It is desirable that the formal adoption of the byelaws or regulations, or the giving of any public notice required by statute, should be deferred until the draft has been provisionally approved. Prints in draft form on paper of foolscap size with margin for notes can be obtained from the Board in the case of all the model series, and it is requested that these may be used in submitting the draft. Where there is no model series, the draft of any proposed byelaws should have a half-margin for notes.

"2. Minor alterations of the model clauses may conveniently be shown in the margin of the model forms, but any clauses proposed in addition to or in substitution for those of any model series should be inserted in the draft on separate sheets of paper with half-margin.

"3. Drafts of byelaws or regulations made under local Act provisions should be accompanied by a copy of the local Act, and a reference should be given to the provisions of it which bear upon the subject of the proposed byelaws or regulations.

"4. It will be convenient and will expedite examination and consideration if the drafts are submitted in duplicate.

"5. Copies in octavo of model byelaws (with certain exceptions) are on sale and can be obtained from Messrs. Wyman & Sons, Fetter Lane, London, E.C., either directly or through any bookseller. Draft forms can only be obtained from the Board.

"6. Where a model for byelaws and regulations authorised by the Public Health Acts Amendment Act, 1890, has not been issued, some of the local government publishers have published series of model clauses (both in 8vo. and draft form) for the purposes of that Act, and these might be of assistance to the council in framing byelaws or regulations thereunder. The publishers' prints in draft form should be used in accordance with the instructions in paragraphs 1 and 2 above, where any byelaws based on the publishers' models are proposed to be adopted."

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The Board also issued the following further Memorandum as to the steps requisite to obtain confirmation of byelaws or regulations when a draft has been finally approved:

"1. Any byelaws or regulations forwarded to the Local Government Board for confirmation should be in print. Care should be taken that the print agrees with the draft approved by the Board, before being formally adopted by the council, as it is desirable that no written alterations should appear in the print. If any written corrections in the print are unavoidable they should be initialled by the person or persons who attest the sealing of the byelaws or regulations.

"2. The byelaws or regulations should be under the common seal of the corporation or council as the case may be. The sealing should be properly attested, and the actual date of the sealing should be inserted in the attestation.

"3. Ample space should be left at the end of the byelaws or regulations for the Board's seal and certificate of confirmation. Two or more series of byelaws or regulations relating to different matters should be separately adopted and sealed.

"4. Before application for confirmation is made, not less than one calendar month's notice of the intention to apply must be given in at least one local newspaper circulating in the borough or district. In this notice the subject of the byelaws may be described in general terms, *e.g.*, "with respect to nuisances" *or* "with respect to new streets and buildings" *or* "with respect to new buildings and certain matters in connection with buildings," care being taken that the description covers the whole of the byelaws. If the subjects of the several byelaws or regulations are described in detail, or if reference is made to the Act or Acts under which the byelaws or regulations are made, such description or reference should be complete and accurate. It is desirable that the notice of intention to apply for confirmation should be extended so as to give notice of the deposit referred to in paragraph 5 of this Memorandum, and that the place and commencement of the month of deposit should be clearly indicated.

"5. For a full calendar month after the date of the publication of the newspaper containing the notice, a copy of the byelaws or regulations must be deposited at the office of the council, for the inspection of the ratepayers.

"6. It is essential that the copy of the byelaws or regulations so deposited should be correct, as the correction of any errors or omissions of a material character may render necessary a fresh compliance with the preliminary requirements of section 184 of the Public Health Act, 1875, before confirmation can be given. If it is thought desirable, the draft approved by the Board may also be deposited.

"7. Having regard to the terms of section 184 of the Public Health Act, 1875, the application for confirmation should be in specific terms, and the Board should be definitely informed that a copy of the byelaws or regulations as submitted for confirmation has been deposited for inspection for a full calendar month subsequent to the date of publication of the newspaper, or subsequent to the first day of the deposit where a particular day is notified for the commencement of the deposit. When the approved draft has also been deposited this should be stated.

"8. The application for confirmation, *which should not be made until the month of deposit has expired*, should be accompanied by—

"(a) The draft revised by the Board:

"(b) The sealed byelaws or regulations: and

"(c) A copy of the newspaper containing the notice of intention to apply for confirmation, with the advertisement clearly marked therein. If the notice was published more than once, the newspaper in which it *first* appeared should be sent."

Model byelaws.

Model Byelaws are issued by the Ministry of Health dealing with a great variety of matters, and as regards subjects upon which no model has been prepared the officers of the Department are always willing to assist by furnishing a specimen series and criticizing a draft.

(*b*) This refers to the formal application for confirmation.

(*c*) These provisions will enable any person to apply to the Ministry with the view of preventing the confirmation of any byelaw.

(*d*) It is presumed that any person who is actually rated to the current rate would be a *ratepayer* within the meaning of this section, and that the definition in

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Sched. II., r. 11, *post*, is not applicable. But whether persons occupying rateable property who are not actually rated would be within the section is doubtful.

(*e*) The neglect of this regulation would not, it seems, invalidate the byelaws.

Effect of confirmation.

(*f*) Confirmation by the M. of H. gives no validity to a byelaw not warranted by the provisions of the Act (*R.* v. *Wood*, *ante*, p. 440; *Elwood* v. *Bullock* (1844), 6 Q. B. 383; *Kruse* v. *Johnson*, *ante*, p. 432). Many byelaws confirmed under the previous Acts have been held by the courts to be invalid. The cases in which byelaws have been held invalid will be found under the several sections by virtue of which byelaws have been made. In so far as it was necessary to refer to them as establishing general principles they will also be found in the note under s. 182, *ante*, p. 432, dealing with the characteristics of a valid byelaw. See also the cases collected in the same note as to byelaws in restraint of trade on p. 437, *ante*.

As to the confirmation of byelaws made under Acts incorporated with this Act (10 & 11 Vict. c. 34, s. 128; 10 & 11 Vict. c. 89, ss. 68, 69; 10 & 11 Vict. c. 14, s. 42) see the Public Health (Confirmation of Byelaws) Act, 1884, *post*.

Byelaws to be printed, etc.

185. All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority (*a*); and a copy thereof shall be delivered to any ratepayer (*b*) of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer (*b*) of the parish at all reasonable hours.

See first notes to ss. 182 and 183 as to the application of these provisions to rural district councils and parish councils.

(*a*) See in s. 306, *post*, p. 640, the penalty upon any person who destroys or defaces any board on which a byelaw is affixed.

Byelaws made under s. 167, *ante*, p. 385, must also be published as that section directs.

By a local Act of 1847 commissioners were empowered to make byelaws which were to be published by being printed and a copy delivered to every person applying for the same, and by painting or placing on boards to be hung up on the front of the office of the commissioners, and also on some conspicuous part of the works or locality to which the same related. Under the P. H. A., 1848, ss. 115, 116, the prescribed mode of publication was the same as that in the text. It was held that a publication in the manner prescribed by the last-mentioned Act was sufficient (*Fielding* v. *Rhyl Improvement Commissioners* (1878), 3 C. P. D. 272; 42 J. P. 311). Whether the omission to publish a byelaw in accordance with s. 185 would invalidate the byelaw is doubtful. *Cf.* the last mentioned case and *Duncan* v. *Knill* (1907), 71 J. P. 287; 96 L. T. 911, and see a leading article in 69 J. P. N. 481. Questions having arisen as to the power of a council under the present section to advertise and issue notices respecting new byelaws with the view of giving publicity to them, the L. G. B. stated that they were not aware of any necessity to advertise the byelaws in a newspaper *in extenso*, but that they saw no objection to the insertion of notices in a newspaper calling attention generally to the provisions of the byelaws, and to the fact that copies might be obtained, and they also thought that copies might, in the case of a rural district, be sent to each parish council as well as to the overseers.

(*b*) See note (*d*) to the last section. It will be observed that payment is to be made for copies of proposed byelaws, but not for copies of byelaws when made.

Evidence of byelaws.

186. A copy of any byelaws made under this Act by a local authority (not being the council of a borough) (*a*), signed and certified by the clerk of such authority (*b*) to be a true copy and to have been duly

confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making confirmation and existence of such byelaws without further or other proof. Section 186.

See first notes to ss. 182, 183 as to the application of these provisions to rural district councils and parish councils.

(*a*) This exception was made because the Municipal Corporations Evidence Act, 1873, s. 2, provided for the primâ facie proof of byelaws made by a town council. That Act is repealed, but its provisions as to evidence of byelaws are re-enacted by the Municipal Corporations Act, 1882, s. 24, which provides that the production of a written copy of a byelaw made under that Act, or any former, or present, or future, general or local Act, if authenticated by the corporate seal, shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy of the byelaw, of having been approved or confirmed by the authority whose confirmation or approval is required to the making or before the enforcing of the byelaw. This section was considered in *Robinson* v. *Gregory*, [1905] 1 K. B. 534; 69 J. P. 161, where it was held that the production of a copy of the byelaws authenticated by the corporate seal was primâ facie evidence of the operative existence of the byelaw, and that the conditions of the statute as to making and publication had been duly complied with. A copy bearing merely a printed facsimile of the borough seal is not sufficient (*Timothy* v. *Fenn* (1910), 74 J. P. 123; 102 L. T. 283); still less is one bearing only the borough arms with a certificate as to approval and confirmation (*Drew* v. *Harlow* (1875), 39 J. P. 420). Any person familiar with the seal of a corporation can prove it, though he did not see it affixed (*Moises* v. *Thornton* (1799), 8 T. R. 307; and see next note). Borough byelaws.

(*b*) By the Evidence Act, 1845, s. 1, "Whenever by any Act now in force or hereafter to be in force any certificate, official or public document, or document or proceeding of any corporation . . . or any certified copy of any . . . byelaw . . . shall be receivable in evidence in any court of justice . . . the same shall respectively be admitted in evidence, . . . provided they respectively purport to be sealed . . . or sealed and signed, or signed alone as required . . . by the respective Acts, . . . without any proof of the seal . . . or of the signature or of the official character of the person appearing to have signed the same . . ." Presumption as to genuineness of seal or signature.

Whether the decision in *Robinson* v. *Gregory*, *supra*, is sufficient to establish that in the case of a byelaw made by a local authority (not being a borough council) under the Public Health Act, the certified copy is primâ facie evidence not only of the existence of the byelaw, but also of the publication required by s. 185, *ante*, p. 444, is not quite clear. There is a distinction between the two cases; in the case of a byelaw made by a municipal corporation, publication is a condition precedent to the byelaw coming into operation at all; whereas in the case of a byelaw made under this Act, continued publication is required by s. 185.

If s. 185 is to be read as requiring the original of the byelaws to be kept affixed in the office, *semble* any copy proved to be correct by one who has compared it with the original would be admissible in evidence. *Cf. Owner* v. *Bee Hive Spinning Co., Ltd.*, [1914] 1 K. B. 105; 78 J. P. 15.

In a prosecution under the Bread Order, 1917, the prosecution omitted to prove the Order before the close of their case, and on this ground the justices dismissed the informations. It was held that the justices ought to have allowed the Order to be proved, or to have adjourned the case for that purpose. *Duffin* v. *Markham* (1918), 82 J. P. 281; 16 L. G. R. 807.

187. Byelaws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section Byelaws made under s. 90 of 5 & 6 Will. 4, c. 76, to be submitted to Local

Section 187. mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act.

Government Board.

For "Local Government Board" (in the margin), now read "Ministry of Health."

The Municipal Corporations Act, 1835, is repealed by the Municipal Corporations Act, 1882, s. 23 of which provides as follows: "The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same . . . Nothing in this section shall interfere with the operation of section 187 of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to instead of section 90 of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances." By s. 260 of the same Act, byelaws in force on December 31st, 1881, continue in force notwithstanding the passing of the Act.

"Good rule and government" byelaws.

The effect of this section (s. 187) is that borough byelaws for the prevention and suppression of nuisances must be submitted to the M. of H. for confirmation. Byelaws for the good rule and government of the borough do not require confirmation by the Ministry. See *Strickland* v. *Hayes* (1896), as reported in 65 L. J. M. C. 55; 60 J. P. 164; *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 61 J. P. 119.

Many decisions have been given with reference to byelaws made under the Municipal Corporations Act, 1882, s. 23 (or the L. G. A., 1888, s. 16). As to the regulation or prohibition of music in the streets, see *R.* v. *Gay and Powell* (1884), 48 J. P. 740; 51 L. T. 92; *Beaty* v. *Glenister* (1884), 51 L. T. 304; *Johnson* v. *Croydon* (*Mayor, etc. of*) (1886), 16 Q. B. D. 708; 50 J. P. 487; *Munro* v. *Watson* (1887), 51 J. P. 660; 57 L. T. 366; *Booth* v. *Howell* (1889), 53 J. P. 678; 5 T. L. R. 449; *Brownscombe* v. *Johnson* (1898), 62 J. P. 326; 78 L. T. 265; *Kruse* v. *Johnson*, *ante*, p. 432; *Southend Corporation* v. *Davis* (1900), 16 T. L. R. 167. As to prohibition of juvenile street vendors, see *Macdonald* v. *Lochrane* (1887), 51 J. P. 629; as to betting in streets and public places, see *Burnett* v. *Berry*, [1896] 1 Q. B. 641; 60 J. P. 375; *Godwin* v. *Walker* (1896), 60 J. P. 308; 12 T. L. R. 367; *Whickham* v. *Ashe* (1897), Times, January 16th; *Jones* v. *Walters* (1898), 62 J. P. 374; 78 L. T. 167; *Kitson* v. *Ashe*, [1899] 1 Q. B. 425; 63 J. P. 325; *Armstrong* v. *Bell* (1899), Times, January 18th; *White* v. *Morley*, [1899] 2 Q. B. 34; 63 J. P. 550; *Hickey* v. *Hay* (1900), 65 J. P. 232; 17 T. L. R. 52; *Scott* v. *Pilliner*, [1904] 2 K. B. 855; 68 J. P. 518; *Airton* v. *Scott* (1909), 73 J. P. 148; 100 L. T. 393; as to street shouting and hawking, see *Innes* v. *Newman*, [1894] 2 Q. B. 292; 58 J. P. 543; *Parker* v. *Bournemouth Corporation* (1902), 66 J. P. 440; 86 L. T. 449; and *Moorman* v. *Tordoff*, *ante*, p. 437; as to waste paper, refuse, and broken glass in streets, see *Batchelor* v. *Sturley* (1905), 69 J. P. 398; 93 L. T. 539; as to annoyance of passengers in streets, see *Nash* v. *Finlay* (1902), 66 J. P. 183; 85 L. T. 682; as to offensive language, see *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 61 J. P. 119; *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 60 J. P. 164; and see *ante*, p. 435; *Gentel* v. *Rapps*, [1902] 1 K. B. 160; 66 J. P. 117; *Russon* v. *Dutton* (1911), 75 J. P. 209; 104 L. T. 599; as to the "rule of the road," see *Bolton* v. *Everett* (1911), 75 J. P. 534; 105 L. T. 830; as to "touting" for carriages, see *Dereham* v. *Strickland* (1911), 75 J. P. 300; 104 L. T. 820. See *Williams* v. *Weston-super-Mare U. D. C.*, *ante*, p. 375, and cases cited therewith, for byelaws made under a local Act as to erection of booths on the foreshore, and see *Stairmand* v. *Clark* (1911), 33 M. C. C. 37, for a conviction under a byelaw prohibiting any one but the town crier from using a noisy instrument for calling persons together.

As to regulations of local authority.

188. The provisions of this Act relating to byelaws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations

made by them under this Act to be published in such manner as they see fit. Section 188.

Regulations are made under ss. 21, 125, 143, 189, 200; also under some of the amending Acts, *e.g.*, the P. H. A., 1890, ss. 20, 40, etc. Some regulations, however, *e.g.*, under s. 125, *ante*, p. 232, require the approval of the M. of H.

OFFICERS AND CONDUCT OF BUSINESS OF LOCAL AUTHORITIES.

Officers of Local Authorities.

189. Every urban authority shall (*a*) from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer (*b*): Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations (*c*) with respect to the duties and conduct of the officers and servants so appointed or employed. Appointment of officers of urban authority.

Subject, in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act (*d*), the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries wages or allowances (*e*) as the urban authority may think proper; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure (*f*).

For the special provisions as to officers of Local Authorities in Naval or Military Service during the recent war see Part I. of the Local Government (Emergency Provisions) Act, 1916, *post*, Vol. II.

(*a*) The urban authority must make these appointments. There is some ambiguity in the section: it appears to recognise that the urban authority has some special existence as such, distinct from its normal character and capacity as the council of a borough, etc. But s. 6 (*ante*, p. 37) only superadds certain functions under this Act to those which the body already possessed: see note on s. 198, *post*, p. 464. It appears, therefore, that the officers of such body should discharge the requisite services rendered necessary by this Act, though by reason of the additional duties they may be entitled to additional remuneration. Separate appointments are prohibited, and it seems irrational that one person should hold two offices under the same body to do what are the same or analogous duties. Obligation to appoint.

(*b*) If the language of this section is compared with that of the next, it would seem that one person only can be appointed to each office. The Interpretation Act, 1889, s. 1, provides that words in the singular shall include the plural, but makes an exception of cases in which "the contrary intention appears." An urban council inquired of the L. G. B. whether they would be entitled to claim from the county council repayment of a moiety of the salary of a second inspector of nuisances for their district if such an appointment were made. The Board drew attention to s. 189, under which (they said) an urban council are empowered to appoint *one* inspector of nuisances only for their district, although they may appoint such assistants as may be necessary and proper for the efficient execution of the Act, and pointed out that they are empowered to sanction the appointment of an inspector of nuisances with a view to the repayment of a moiety of the salary by the county council in those Joint appointments.

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cases only in which the officer acts as a principal and not as an assistant. The Board added that their sanction is not necessary to the appointment of an assistant inspector of nuisances, and there is no repayment from the county fund in respect of the salary of such an officer.

See now, however, the provisions of the P. H. (Officers) Act, 1921, *post*.

This Act, however, provides only for medical officers of health and inspectors of nuisances (henceforth to be designated "sanitary inspectors"). As regards these officers, if their appointment be for whole time service the Act grants a certain security of tenure in that they cannot be removed from office by the local authority except with the consent of the Minister of Health, who may also himself dispense with their services. The Act authorises the appointment of two or more inspectors, but the provision as to security of tenure applies only to the chief or senior inspector. The Act also contains provisions for temporary appointments.

There would seem to be no clear authority for the appointment of more than one person as clerk; but there are several instances in which an urban district council have found the appointment of a firm of solicitors as joint clerks to be convenient, and no legal difficulty has been reported.

Appointment of councillor or ex-councillor to paid office.

The M. of H. deprecate the appointment to paid offices of persons who are or have recently been members of the appointing body. Unless very special grounds are shown, their sanction (if required) will not be given where the person appointed is or has within twelve months been a member of the council (see Circular of May 5th, 1911).

Method of appointment.

Section 191, *post*, p. 454, makes provision as to the mode of appointment of the medical officer. In general the appointment of an officer appears to be complete by election, and no document in writing is required, but there should be a minute. See *Smart* v. *West Ham Union* (*Guardians of*) (1855), 10 Ex. 867; 20 J. P. 596; *R.* v. *Greene* (1852), 17 Q. B. 793; 16 J. P. 183; *Roberts* v. *Drewitt* (1864), 18 C. B. (N.S.) 48; *R.* v. *Powell*, [1899] 1 Q. B. 396; 63 J. P. 84). The P. H. A., 1848, s. 149, required all consents, sanctions, approvals, or authorities of a local board to be in writing, and under their seal and the hands of five or more of them. It was held that this did not mean that every act of the board must be under their hands and seals, and that the appointments of clerk and surveyor to the board need not be so (*Smith* v. *Hirst* (1871), 35 J. P. 247; 23 L. T. 665). But if the officer seek to raise any question as to breach of the engagement in any civil court, the proceeding will fail if there be no contract under seal, if the appointment is worth £50 (*Dyte* v. *St. Pancras* (*Guardians of*), *ante*, p. 399; *Austin* v. *Bethnal Green* (*Guardians of*), *ante*, p. 398; *Wood* v. *East Ham U. D. C.* (1907), 71 J. P. 129; 5 L. G. R. 403). Reference may be made to a case decided under the Elementary Education Act, 1870 (*Scott* v. *Clifton School Board* (1884), 14 Q. B. D. 500; 52 L. T. 105); under that Act the appointment of an officer may be made by a signed minute, and such appointment is to be as valid as if made under seal; it was held that an architect appointed by minute only could recover for his services, though he had no appointment under seal.

In *R.* v. *Tralee U. D. C.*, [1913] 2 I. R. 59 (see also *R.* v. *Boris* (1911), 45 Ir. L. T. 267), it was held that a resolution that salaried officers should be selected by means of a qualifying and competitive examination was not *ultra vires*, and that an officer elected without examination, whilst such resolution was unrescinded, was not validly elected. In *R.* v. *Newry U. D. C.* (1909), 43 Ir. L. T. 172, the court refused to order a new election, being satisfied that although the election had been irregularly conducted and declared, there was undoubtedly a solid majority at the meeting in favour of the person declared elected. It was apparently admitted that, if a new election had been ordered, such person's supporters would by reason of changes in the council no longer have been able to carry his election (*cf.* also cases in note (*f*) as to *quo warranto*).

Under the P. H. A., 1848, an appointment was exempt from stamp duty by reason of s. 151. On the repeal of that Act the stamp exemption ceased to exist; but by 38 & 39 Vict. c. 23, s. 14 (repealed by the S. L. R. A., 1883), the stamp duties charged under the Stamp Act, 1870, in respect of appointment to an office or employment ceased to be payable, and they were not reimposed by the Stamp Act, 1891.

Proof of the appointment of an officer may be supplied by the production of the minutes of the authority containing an entry of the appointment: see Sched. I., Part 1, r. 10, *post*.

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In *Smith* v. *Hirst*, *ante*, p. 448, it was held that the title of persons acting as such officers cannot be questioned by third persons.

Qualifications and duties, etc.

The statute does not require any particular qualification for any of the officers, except the medical officer, as to whom see s. 191, *post*, p. 454; it is, however, generally found convenient to select a solicitor as clerk, and an engineer or professional surveyor as surveyor.

The regulations governing the appointment, tenure of office, salary and duties of medical officers of health and inspectors of nuisances, are contained in the General Order of the L. G. B., dated December 13th, 1910, a copy of which, together with the Board's Circular Letter and a Memorandum, will be found in App. II., *post*, Vol. II.

Medical officer.

When an appointment is made and part of the salary is paid by the county council under the L. G. A., 1888, s. 24, the M. of H. prescribe the duties to be discharged by the officer. They may also prescribe the duties of a medical officer of health in all cases. See s. 191, *post*, p. 454.

Under the L. G. A., 1888, s. 17 (2), (3), the duty of appointing a medical officer of health might be satisfied by an arrangement with the county council for rendering available the services of the county medical officer; but this provision was repealed (without prejudice to any existing arrangement) by the Housing, Town Planning, etc. Act, 1909, ss. 68 (3), 75, Sched. VI., *post*, Vol. II.

Surveyor.

Upon the question of the appointment of a consulting surveyor the L. G. B. once expressed themselves as follows: Provided that the appointment is made in terms which leave no doubt as to the particular officer who will in all cases discharge the duties attaching by statute to the office of surveyor, the Board are not aware of any objection to such an appointment on legal grounds, but on administrative grounds the proposal is one which they would not have thought to be generally in the interests of the district.

The M. of H. object to the employment of the surveyor as clerk of works on sewerage or other works to be carried out by the council. They hold that it is impossible for one man to act efficiently in both capacities, for if his duties are to be satisfactorily performed, it is imperative that a clerk of the works should always be on the spot so long as any men are at work. His principal duty is to prevent bad workmanship and the use of inferior materials.

As to the duties of a surveyor in proceedings for the diversion or stopping up of a highway under the Highway Act, 1835, ss. 84, 85, see *United Land Co.* v. *Tottenham L. B.*, *ante*, p. 265.

Ex-service men as sanitary inspectors.

By circular, dated April 23rd, 1920 (see "Local Government, 1920," p. 397), the M. of H. drew the attention of local authorities to the claims of ex-service men who were being trained as sanitary inspectors under a scheme of the Ministry of Labour.

Inspector of nuisances.

Where an inspector of nuisances is employed by his council to act as surveyor or engineer for a sewerage scheme, his salary cannot be increased on this account, as such work forms no part of his duties as inspector of nuisances; but it is open to the council to give him separate remuneration for acting in such capacity.

Treasurer.

It has been held that a borough treasurer acting also as treasurer to the council as the urban authority is under the Municipal Corporations Act, 1882, and under this Act a statutory officer with statutory duties, and not merely a servant of the council, but the custodian of the borough funds which are a trust fund, and that it is his duty not to part with them except on proper authority, *i.e.*, a lawful order of the council (*Att.-Gen.* v. *De Winton*, [1906] 2 Ch. 106; 70 J. P. 368). In this case, which was an action against the treasurer by the Attorney-General, suing on the relation of a burgess, impeaching his accounts in respect of charges for interest on an unauthorised overdraft, and claiming an injunction to restrain him from making any further payments for such interest out of the borough funds, it was held that the corporation were not necessary parties to the action, as no relief was asked for against them.

Clerk.

The attention of the L. G. B. being drawn to the fact that the offices of clerk and collector to an urban council were held by the same person, they intimated that, in their opinion, an arrangement under which an officer such as a collector, whose regular employment is to receive money on behalf of the council, is likewise employed upon, or allowed to have access to, their accounts, is not one which can be recognised as desirable.

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With reference to the duties of the clerk, several cases may be mentioned. The P. H. A., 1848, s. 138, provided that certain local boards might be sued in the name of the clerk. 29 & 30 Vict. c. 90, s. 46, however, incorporated such boards. Hence, when a suit in equity was brought against the clerk in his official capacity, a demurrer was allowed on the ground of want of equity, but leave to amend was granted, the clerk's name being retained, as he was required to answer in his official capacity (*Deeks* v. *Bailey* (1869), 21 L. T. 581). It was at this date necessary to make some officer a party for the purpose of interrogating him, but Order XXVI. r. 5 has done away with the necessity for such practice (*Wilson* v. *Church* (1878), 9 Ch. D. 552).

A clerk to a local board, who was also collector of rates, engaged the plaintiffs, a firm of law stationers, to assist him in copying the valuation list in the rate book, and also in copying the rate accounts. He absconded, and the plaintiffs sued the local board for the amount due for such copying It was held that the plaintiffs were rightly non-suited, on the ground that there was no evidence that the clerk had authority to incur the debt for them (*Meredith* v. *Radcliffe L. B.* (1879), 43 J. P. 819).

Where a solicitor had been appointed clerk to a local board with a salary, for conducting the legal as well as the ordinary business of the board, it was held by BACON, V.-C., upon an interlocutory motion, in an action for *mandamus* to compel production of papers, that whatever claim the clerk might have against the board for payment of costs in respect of professional services, he had no right, being in the relation of a servant, to refuse production of the legal papers or other documents claimed by the board as belonging to them. It was held, however, by the Court of Appeal, that as such an order would prejudice the clerk's lien, it could not be made before the trial of the action without payment into court of a sum sufficient to meet the amount claimed by the clerk, upon which he was to have the same lien as upon the papers; and the court ordered that upon that being done the clerk should deliver up to the plaintiffs all books and papers claimed in the action (*Newington L. B.* v. *Eldridge* (1879), 12 Ch. D. 349).

It would appear that if in the course of legal proceedings a local authority are ordered to answer interrogatories "by their clerk or other their proper officer," and the authority elect to answer through the clerk, he cannot claim any privilege on the ground that he is acting as solicitor of the board (*Swansea* (*Mayor of*) v. *Quirk* (1879), 5 C. P. D. 106; 44 J. P. 378). But where an order was made for the examination of "X., town clerk to the plaintiffs," and X. objected, claiming privilege for the plaintiffs as their solicitor, it was held that the objection was good (*Corporation of Salford* v. *Lever* (1890), 24 Q. B. D. 695; 54 J. P. 519).

Where a surveyor is ordinarily employed it is not part of the ordinary duties of the clerk to pay the wages of the men employed by the council on works being carried out for them (*Wembley U. D. C.* v. *Poor Law, etc. Officers' Mutual Guarantee Association* (1901), 65 J. P. 330).

(*c*) The P. H. A., 1848, s. 37, provided that a local board might make byelaws in this respect (*Ex parte Richards*, *post*, p. 453), which byelaws required confirmation and other formalities. Now the authority only make *regulations*, which (s. 188) do not require confirmation.

(*d*) See s. 191 and notes thereto, *post*, p. 454.

Salaries, etc.

(*e*) See also as to salaries, etc., note (*b*), *supra*. The salaries of officers are apportionable under the Apportionment Act, 1870, ss. 2, 5.

At an early date difficulty was sometimes experienced in the selection of the appropriate form of action by which to recover the salary of an officer. Thus, where commissioners under a local Act had power to appoint officers at a salary to be paid out of the rates raised, it was held that an appointment did not create a contract on the part of the commissioners to pay the salary, and that, therefore, an *indebitatus* action would not lie for salary, a *mandamus* or an action on the case being the proper remedy (*Bogg* v. *Pearce* (1851), 10 C. B. 534; 20 L. J. C. P. 99). In this case the commissioners were not a body corporate, and the action was brought against the successors of those commissioners who made the appointment; all the judges held that merely by reason of the appointment by their predecessors no contract could be proved against the successors. In other words it was held that the appointment did not create a "debt," but only a duty to pay the salary

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out of the rates. In another case it was held that an officer appointed by a town council under the Municipal Corporations Act, 1835, could not maintain an action of "debt" against the corporation for arrears of salary (*Addison* v. *Mayor, etc. of Preston* (1852), 12 C. B. 108; 21 L. J. C. P. 146). The reason for this decision was that there was no legal liability on the part of the corporation as corporators, to pay out of all their corporate property, but that the liability was only to pay out of a specific fund, viz., the borough fund. See also *Smart* v. *West Ham Union* (*Guardians of*) (1855), 10 Ex. 867, and *Cane* v. *Chapman* (1836), 5 A. & E. 647, which illustrate the same difficulties, and *cf.* with the last-mentioned case *Edwards* v. *Lowndes* (1852), 22 L. J. Q. B. 104; 1 El. & Bl. 81. In a later case, however, it was held that an action was maintainable by an architect against the committee of visitors for the time being of a lunatic asylum in the name of their clerk, upon a contract entered into by a former committee within the scope of their authority (*Kendall* v. *King* (1856), 25 L. J. C. P. 132). The court regarded the committee as a body in the nature of a corporation, and held that as regards a contract made by them *intra vires*, procedure for a breach thereof was the same as in all actions of contract, with all ordinary incidents except that execution on a judgment was modified. This case was followed in *Hall* v. *Taylor* (1858), 27 L. J. Q. B. 311; 23 J. P. 20, where it was held that a clerk appointed by commissioners under a local Act, who were empowered to pay a salary out of the rates leviable by them, could maintain an action of contract against the commissioners for the time being, in the name of their clerk for services rendered to former commissioners. It is conceived that the principle of these two last-mentioned decisions is applicable at the present date to the liability of a district council towards an officer duly appointed, and that, therefore, an action would lie for salary. Seeing that a local authority is now a corporate body, it must now, of course, be sued in its corporate name and not in the name of its clerk. But in any case in which judgment is obtained against the authority, it can seldom be enforced otherwise than by *mandamus*.

It is to be observed that a claim for a writ of *mandamus* cannot be sustained if there is any other effectual remedy. In an action by executors against the clerk of commissioners under a local Act, in which the plaintiffs claimed a writ of *mandamus* under the Common Law Procedure Act, 1854, s. 68, the declaration stated that the commissioners were indebted to the testator for the agreed salary payable by them to him for services rendered by him as clerk to the commissioners, and also for other work by him as the attorney of, and otherwise for, the commissioners in and about their business. The declaration then alleged that the said debts became and were a charge on any moneys which might be in the hands of the commissioners, and which should have been collected by them under and by virtue of the said Act; and if the commissioners should not have in their hands any moneys sufficient to pay the said debts, then such debts became a charge and were chargeable on a rate leviable and to be levied under the Act. The defendants pleaded, to so much of the debt as became due on simple contract, the Statute of Limitations, and to the debts except as to the agreed salary, that no signed bill had been delivered, and also that the commissioners had no funds whereout they could pay the said debts:—*Held*, first, that the declaration was bad, inasmuch as, assuming that the services in respect of which the agreed salary was claimed were payable out of the rates, the others might be services for which the commissioners were personally liable, and, consequently, the remedy was by action and not by a claim for *mandamus*; secondly, that on the same principle, the two first pleas were good; and, *semble*, that the last plea was also good (*Bush* v. *Beavan* (1862), 32 L. J. Ex. 54; 1 H. & C. 500). It was subsequently held that it was not necessary for the clerk to deliver a signed bill, and that a report of a committee in which the debt due to the clerk was scheduled as a liability did not take the case out of the Statutes of Limitations (*Bush* v. *Martin* (1863), 27 J. P. 825; 2 H. & C. 311).

Where an authority employ a solicitor to do conveyancing work for them, there is no reason why they may not assent to his election to charge according to the old system as altered by Sched. 2, instead of by scale, in accordance with Rule 6 of the General Order under the Solicitors Remuneration Act, 1881 (*Re Evans*, [1905] 1 Ch. 290; 69 J. P. 104).

A council appointed as their clerk a solicitor, who by the terms of his appointment was to act as their solicitor, and do other work, in consideration of an

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inclusive salary of £400 a year, and his out-of-pocket expenses. In an action against the council, in which the clerk acted as their solicitor, the plaintiff was ordered to pay their costs. Their bill of costs amounted to £17 18*s.* 1*d.*, of which part was claimed in respect of out-of-pocket expenses, and part in respect of the clerk's services as solicitor in the action. It was held that the council were not prevented by the Solicitors Act, 1870, s. 5, or otherwise, from recovering the costs claimed in respect of such services (*Henderson* v. *Merthyr Tydfil U. D. C.*, [1900] 1 Q. B. 434).

For a case as to the liability of a local authority to pay wages or salary in lieu of holiday, see *Hurt* v. *Sheffield Corporation* (1916), 14 L. G. R. 614; 32 T. L. R. 393.

Payments of loan moneys.

In sanctioning loans for the execution of works by a district council the M. of H. always stipulate that no portion of the moneys raised under the sanction shall be applied in remuneration of officers of the council or in payment of the wages of workmen in the permanent employment of the council. They allow as an exception, however, a payment to a clerk who is a solicitor for legal work in connection with the object of the loan, and not within his duties as defined by the terms of his appointment. In such a case a bill when taxed may be discharged out of loan moneys, but charges within the scale prescribed in Part I. of Sched. I. to the General Order under the Solicitors Remuneration Act, 1881, need not be submitted for taxation. See also note (*b*) to s. 233, *post*, p. 526.

Payment for extra work.

It seems clear that when an officer performs, at the request of the council, services of a kind different from those which he is bound to fulfil as such officer, there is no objection to his being remunerated for so doing. See *R.* v. *Gloucester* (*Mayor of*) and other cases, cited in the notes to s. 193, *post*, p. 457.

A payment to a medical officer of health or inspector of nuisances in consideration of extra services rendered may apparently be made with the sanction of the M. of H. under their General Orders of December 13th, 1910.

In the case of a surveyor there is no provision authorising the making of an extraordinary payment, *i.e.*, one in addition to salary. The M. of H. have suggested in some cases whether the object might not be attained by an increase of the salary of the officer for a specified period, the period and amount of the increase being so calculated as to make the actual benefit equal to that which would accrue if the proposed payment were made in a lump sum. At the same time, the Ministry pointed out that if a council adopted this course the period for which the increase of salary was awarded must be prospective, *i.e.*, must commence not sooner than the date of the resolution of the council awarding such increase. Gratuities, in the strict sense of the term, cannot legally be paid to officers. See note (*b*) to s. 193, *post*, p. 457.

As to what is meant by "allowances," see the notes to s. 193, *post*, p. 456.

A Scotch borough surveyor sued for payment for work done, as he alleged, outside the scope of his ordinary duties. On his death his executors continued the action. No express contract to give him extra remuneration was proved, and he was never instructed to do any work except in his official capacity. On three occasions in thirty-eight years he had received honoraria for special services, but with these exceptions he did all work remitted to him without extra remuneration:—*Held*, that his delay in putting forward his claim threw on him the onus of proving that the work was not done *quâ* borough surveyor, and that the proof failed (*Mackison* v. *Dundee Magistrates*, [1910] A. C. 285).

In *Mansbridge* v. *Barnet U. D. C.* (1909), 73 J. P. 255, a county court judge held that a long-continued practice under which a part-time officer of a council has been paid extra remuneration for extra work done by him may give rise to an obligation upon the council to pay for further extra work done, although nothing has been previously said as to extra remuneration being paid therefor and although no resolution to pay for the extra services has been passed.

As to the power of an authority to give extra remuneration to an officer attending on their behalf as a witness before a parliamentary committee, reference may be made to *R.* v. *Newell*, [1911] 2 I. R. 535.

Superannuation.

There is no provision here for superannuation, but some local Acts make provision in this behalf. See as to such a scheme, *Phillips* v. *London School Board*, [1898] 2 Q. B. 447; and as to the right to deduct amounts paid to superannuation funds from the amount of salary for the purpose of assessment to income tax under Sched. E., see *Hudson* v. *Gribble*, [1903] 1 K. B. 517; 67 J. P. 85; and as to the

liability to pay to a superannuation fund in respect of special duty grants, see *R.* v. *Lyon, Ex parte Harrison*, [1921] 1 K. B. 203 ; 85 J. P. 78. **Note to Section 189.**

A scheme of superannuation for local government officers was recommended by a departmental committee in a report dated July 30th, 1919. See "Local Government, 1919," p. 485.

As to the unemployment insurance of officers, see 10 & 11 Geo. 5, c. 30, Sched. I., Part II. (*a*), and *Ex parte Berks County Council, Ex parte Ffooks* (1922), 38 T. L. R. 255.

(*f*) In consequence of this provision the court refused to grant a rule for a *quo warranto* information, applied for by the former holder of the office of clerk to a local authority, on the ground that the dismissal from office had been illegal, for if he had been reinstated, he might legally be dismissed immediately. *Semble*, that a resolution of an authority dismissing an officer is not a resolution rescinding the resolution by which he was appointed within the meaning of a byelaw with respect to the rescission of resolutions (*Ex parte Richards* (or *R.* v. *Jones*) (1878), 3 Q. B. D. 368 ; 42 J. P. 614 (dissenting from *R.* v. *Wrexham Turnpike Roads (Trustees of)* (1836), 5 A. & E. 581)). See, to the same effect, *Ex parte Parry* (1887), 3 T. L. R. 649 ; *R.* v. *Carroll* (1888), 22 L. R. Ir. 400 ; *R.* v. *Whelan* (1887), 20 L. R. Ir. 461 ; *R.* v. *Blaney*, [1901] 2 I. R. 93 ; and *cf. R.* v. *Hunton* (1911), 75 J. P. 335 ; 9 L. G. R. 751 ; *Longfield Parish Council* v. *Wright*, [1918] 16 L. G. R. 865 ; and *Tottenham U. D. C.* v. *Hillier*, [1920] 42 M. C. C. 220. See further on the subject of an information in the nature of a *quo warranto*, *R.* v. *Burrows*, [1892] 1 Q. B. 399 ; and *R.* v. *Wells* (1895), 42 W. R. 576 ; 11 T. L. R. 458. As to questioning an invalid election by *mandamus*, see *R.* v. *Schull JJ.*, [1910] 2 I. R. 601. Tenure of office.

It seems doubtful whether the power to dismiss at pleasure could be provided against by express contract. As to the power of an authority to dismiss without notice and without assigning reasons when there is no express contract, see *R.* v. *Darlington School Governors* (1844), 6 Q. B. 682 ; *In re Teather* (1850), 19 L. J. M. C. 70 ; *Haynan* v. *Rugby School Governors* (1874), 43 L. J. Ch. 834 ; *Ex parte Richards, supra ; Wood* v. *East Ham U. D. C.* (1907), 71 J. P. 129 ; 5 L. G. R. 403 ; *Lloyd* v. *Bermondsey Guardians* (1913), 77 J. P. 72 ; 29 T. L. R. 84 ; *Payzu* v. *Hannaford*, [1918] 2 K. B. 348 ; 82 J. P. 216.

As to a servant of the Crown, see *Hales* v. *R.* (1918), 34 T. L. R. 589.

See also the provisions of the P. H. (Officers) Act, 1921, *post*.

190. Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances ; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act (*a*). Appointment of officers of rural authority.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid (*b*).

See the notes to the previous section, and particularly the reference therein to the P. H. (Officers) Act, 1921, *post*, which applies equally to rural as to urban authorities.

(*a*) The section places a rural district council under no obligation to appoint a surveyor. Such an officer is, however, sometimes required, as for example, when the council are proceeding under urban powers (see s. 276) for the making up of private streets under s. 150. In such a case the council, if they have no permanent surveyor, may appoint a person to fill that office for the purposes of the work in hand. Of course, now that rural district councils are the highway authority of their districts (see the L. G. A., 1894, ss. 25, 81), they have a surveyor or surveyors for the purpose of the Highway Acts. Obligation to appoint.

For a now repealed provision under which a district council could arrange for the county medical officer to act as their district medical officer, see the L. G. A., 1888, s. 17, *post*.

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Poor law officers.

(*b*) Although the guardians and the rural district council are no longer the same body, this clause remains unrepealed; but where the treasurer of a rural council, who became such by reason of his being treasurer to the guardians of the union and rural sanitary authority prior to the operation of the L. G. A., 1894, dies, or otherwise ceases to hold office, the L. G. B. said they considered that the rural district council, being an entirely separate body from the guardians of the poor law union in which the rural district is situated, should proceed to make a formal appointment of a treasurer. And without any such vacation of office a rural council may apparently appoint another person to perform duties which otherwise would devolve upon these officers, so long at least as their status and remuneration are not affected (*Genn* v. *East Kerrier R. D. C.* (1898), 62 J. P. 215).

It sometimes happens that in consequence of the operation of the L. G. A., 1894, a rural district council has two clerks—one the clerk to the late sanitary authority and the other the clerk to the late highway board. The L. G. B. did not hold the view that in the case of the death or resignation of the clerk for highway matters the remaining clerk becomes entitled to discharge the whole of the duties appertaining to the office of clerk to the rural district council. They pointed out that it rested with the district council to decide whether they would appoint him as their clerk for all purposes or appoint a second clerk to the council as a successor to the late clerk for highway matters. The Board, however, added that the latter arrangement did not seem to them to be a desirable one, and that the appointment of a clerk and an assistant clerk would be preferable to that of two clerks to the council, assuming that more than one clerk is needed.

Under Art. 3 of the General Consolidated Order (Amendment) Order of February 26th, 1866, it is the duty of the clerk to the guardians, if he be an attorney or solicitor, to perform and execute, without charge for anything beyond disbursements, all legal business connected with the union, or in which the guardians shall be engaged, subject to certain exceptions specified in the Article. The L. G. B. pointed out that if any such clerk appointed at a date subsequent to the issue of the Order became *ex officio* clerk to the late rural sanitary authority, and by the L. G. A., 1894, s. 81 (4), clerk to the rural district council upon the same terms and conditions as he held office at the passing of that Act, he holds the office of clerk to the rural district council subject to the provisions of the Order. Consequently, he is not entitled to be paid any remuneration beyond his salary for legal business not within the exceptions provided for by Art. 3, and the salary should therefore be fixed at such an amount as would remunerate him for all the duties attaching to his office. The Board, however, recognised that there were cases in which extraordinary services may be rendered by the clerk, for which extra remuneration may equitably be allowed, and, in the absence of any legal provisions for otherwise dealing with the matter, it was the Board's practice where a rural council wished to grant such remuneration, to advise the council to pass a resolution increasing the clerk's salary for the next quarter by the amount of the proposed extra remuneration.

As to medical officer of health, etc.

191. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified practitioner (*a*); and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification appointment duties salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament (*b*), and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act (*c*).

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities (*d*) of such districts; and the Local Government Board shall by order (*e*) prescribe the mode of such appointment, and the proportions in which the expenses of such

appointment, and the salary and charges of such officer shall be borne by such authorities. **Section 191.**

Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said Board may prescribe, be appointed a medical officer of health (*f*); and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act (*g*).

In case of illness or incapacity (*h*) of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

See also P. H. (Officers) Act, 1921, *post*.

(*a*) That is, a person duly registered under 21 & 22 Vict. c. 90; 49 & 50 Vict. c. 48.

(*b*) The L. G. A., 1888, s. 24, provides for payment by county councils in substitution for annual local grants theretofore made out of the Exchequer in aid of local rates. It enacts that in substitution for local grants, the council of each county shall from time to time pay out of the county fund and charge to the Exchequer Contribution Account certain sums, including, among others, half the cost of each local authority of the salary of the medical officer of health and inspector of nuisances where the qualification, etc. of such officer is in accordance with the regulations made by the M. of H. under the above section. The same section provides that a reference in s. 189 (*ante*, p. 447), and in the above section, to officers any portion of whose salary is paid out of moneys provided by Parliament, shall be construed to refer to those officers in respect of whose salaries payment is made by a county council. See the section *in extenso*, *post*. The regulations made by the L. G. B. as to the qualification, etc. of officers, part of whose salary was paid by Government and is now paid by the county council, will be found in an Order dated December 13th, 1910, in App. II., *post*, Vol. II. See also an accompanying circular and memorandum. The corresponding Order as to Port Sanitary Districts is dated December 21st, 1910: see Vol. II., *post*. Contribution towards salary by county council.

(*c*) The L. G. A., 1888, s. 18, *post*, now prescribes the qualification of a medical officer of health.

(*d*) These words include each class of authorities, urban and rural. See also s. 286, *post*, p. 621, as to union of districts for the appointment of a joint medical officer.

(*e*) See s. 205, *post*, p. 468. See the Orders referred to above.

(*f*) It must be carefully noticed that this appointment cannot be made absolutely. The M. of H. must give their sanction. They will require to be satisfied not only as to the capacity of the individual to execute the duties, but that he can do so without detriment to the discharge of his other official duties. A minute of the L. G. B. with reference to these joint appointments was issued.

(*g*) Note that the medical officer of health has no definite powers. The Orders of the L. G. B. referred to above prescribe the duties of a medical officer of health, and some powers are incidentally given to him in this Act, but this paragraph confers upon him the powers of a sanitary inspector.

(*h*) Perhaps this word will cover the necessary or unavoidable absence of the officer. See also the Housing of the Working Classes Act, 1890, s. 26, *post*, Vol. II.

192. The same person may be both surveyor and inspector of nuisances (*a*); but neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk (*b*); and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer. Offices tenable by same persons.

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Any person offending against this enactment shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt (*c*).

(*a*) See Memorandum of the L. G. B., dated December, 1910, in App. II., *post*, Vol. II. The M. of H. recently refused to sanction with a view to repayment the appointment of a borough surveyor as inspector of nuisances on the ground that the borough demanded the services of an officer who could give his whole time to the duties of inspector of nuisances and those of designated officer under the Housing (Inspection of District) Regulations, 1910.

(*b*) The object of this prohibition, which is common in local Acts, appears to be to prevent the clerk, who represents the council, from holding their money, and thus to create a check upon the two officers. The clerk cannot deal with the money, because he does not hold it, and the treasurer must hold it, until the clerk, under the direction of the council, gives him authority to pay it away.

Where a local Act provided that a corporation should not appoint as treasurer the person who was appointed clerk, and a penalty was imposed on any person, being the clerk or his partner or clerk, who should in any manner officiate for the treasurer, it was held that the corporation were prohibited from appointing the clerk to such office as *assistant* treasurer; but where the corporation had so appointed the clerk, and he had discharged some of the duties of the treasurer, it was held that it was a question for the jury whether he did so bonâ fide and in the belief that he was legally appointed as an independent officer, or colourably and in evasion of the Act; and that, in the former case, he would not be liable to the penalty, but in the latter he would (*Hawkings* v. *Newman* (1839), 8 L. J. Ex. 82; 4 M. & W. 613). The words of the section render a similar evasion of this Act impracticable.

(*c*) The consent of the Attorney-General under s. 253 is not necessary in order to maintain such an action (*Fletcher* v. *Hudson* (1880), 5 Ex. D. 287; 45 J. P. 5: *per* BRAMWELL, L.J.).

Officers not to contract with local authority.

193. Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested in any bargain or contract (*a*) made with such authority for any of the purposes of this Act.

If any such officer or servant is so concerned or interested, or, under colour of his office or employment, exacts or accepts any fee or reward whatsoever other than his proper salary wages and allowances (*b*), he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person (*c*), with full costs of suit, by action of debt.

See as to money, gift or other consideration corruptly received by an officer of a local authority from a person holding or seeking to obtain a contract from a local authority the Prevention of Corruption Act, 1916, *post*, Vol. II.

Later modifications.

(*a*) This provision has been modified by the Public Health (Members and Officers) Act, 1885, s. 2, which provides that it shall not be unlawful for any officer or servant appointed under this Act or a local Act to be concerned or interested in any contract with the authority, made with such consent or approval as is therein mentioned, for the sale, purchase, leasing or hiring of any lands, rooms, or offices, or to be concerned or interested in any contract with the authority as a shareholder in any joint stock company. See, for its full terms, the section *in extenso*, *post*, and the notes thereto.

A contract made contrary to the provisions of this section is void, and cannot be enforced (*Melliss* v. *Shirley L. B.* (1885), 16 Q. B. D. 446; 50 J. P. 214); and any payments made under such a contract would be illegal (*Barton* v. *Piggott* (1874)

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L. R. 10 Q. B. 86). But *semble* that if after the making of a contract with a local authority, an officer of the authority became interested in it, this section would not avoid the contract. In a case decided under the City of London Sewers Act, 1848, s. 42, it was held that the interest of a member of the corporation in a company which took an assignment (not amounting to a novation) of a contract good in its inception did not render the contract null and void (*City of London Electric Lighting Co.* v. *London Corporation*, [1903] A. C. 434; 67 J. P. 437).

See further, as to the interest in a contract which may disqualify councillors, the cases cited in the notes to s. 46 of the L. G. A., 1894, *post*.

Effect of section.

(*b*) This provision is intended to apply to fees from other persons than the authority, and is levelled at the practice of demanding fees from persons seeking aid from the council, or exposed to proceedings by them. The language is sufficiently general to prevent the officer receiving gratuities (in the strict sense of the word) from the authority in respect of services covered by his salary. As regards remuneration due to an officer, in addition to his fixed salary, for extra services rendered, and the mode in which it can be paid, see note (*e*) to s. 189, p. 450, *ante*.

It is to be observed that the statute applies to demands made *under colour of the office*, and therefore not to claims when the officer acts and makes a demand for services which he renders independently of his office. Thus the clerk may charge professionally for contracts prepared for contractors, if they think proper to employ him, and if he can do so without injury to the council. Perhaps, also, the surveyor may not be prevented from acting professionally for persons within the district, but the question turns largely on the terms of his appointment, and such conduct may lead to a mischievous result.

A clerk to the trustees of a parish was appointed under a local Act by the vestry at "such reasonable salary as the vestry shall appoint to be paid to" him. The clerk having in a certain year had much extra work in connection with litigation, the trustees (apparently without consulting the vestry) resolved that he should be paid a gratuity out of the funds under their management. The parish treasurer refused to sign the necessary cheque, and the court refused to grant a *mandamus* to him, saying that there was no power to grant gratuities out of rates (*Ex parte Mellish* (1863), 8 L. T. 47).

A municipal corporation engaged at a salary a surveyor for purposes connected with their existing and projected waterworks. It was expressly provided that he was not to be paid extra for extra work, and was to be a "full time" officer. Subsequently, finding him to be qualified as an engineer, they dismissed the engineer who was superintending the construction of their new waterworks, and employed the surveyor to superintend the work. The court were apparently satisfied that there was no objection to the corporation voting him a sum of money for his work in that capacity, which was outside the scope of his original employment (*R.* v. *Gloucester Corporation* (1859), 23 J. P. 709).

By the terms of contracts entered into with a municipal corporation for the purposes of the Act, the surveyor to the corporation was to receive from the contractors, in respect of bills of quantities to be prepared by him, percentages on such amounts as he should certify to be due to such contractors from the corporation. It was held that in respect of each contract the surveyor was liable to a penalty as having been "concerned or interested" therein within the meaning of the section. The corporation also employed their surveyor, apart from his ordinary duties, to superintend the construction of certain drainage works as their engineer, and agreed to remunerate him by a percentage on the outlay. It was held that he was liable to the penalty imposed by this section (*Whiteley* v. *Barley* (1888), 21 Q. B. D. 154; 52 J. P. 595). Whilst the action (*Whiteley* v. *Barley*) was pending, the corporation resolved to contribute £300 towards the legal expenses of their surveyor (the defendant), and after the decision of the action the plaintiff therein (a ratepayer) obtained a rule for a writ of *certiorari* to bring up and quash the order of the corporation settling the remuneration of the surveyor, and the order for the payment of the sum of £300 on the ground that they were illegal and *ultra vires*, and that the corporation had no power to make them. This rule was made absolute, and the court ordered "the mayor, aldermen, and burgesses" to pay the costs of and occasioned by the application (*R.* v. *Ramsgate* (*Mayor, etc. of*) (1889), 23 Q. B. D. 66; 53 J. P. 740). A further application was then made for an order that certain

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members of the corporation should personally pay such costs:—*Held*, that the members of the corporation who voted in favour of the resolution for making the illegal payments and for resisting the proceedings for quashing them were personally liable for the costs incurred (*R.* v. *Vaile (or Whiteley)* (1889), 23 Q. B. D. 483; 54 J. P. 134).

Upon the application for the *certiorari* in the above mentioned case (at 23 Q. B. D. 483) it was admitted that the payment to the surveyor of a commission on the contract price of the works was invalid, but it was contended that a fixed sum equal to the amount of the commission might have been lawfully paid to him as an "allowance" under s. 189, and that the invalidity of the payment being in form rather than in substance, the court in the exercise of their discretion ought to refuse to quash the order for payment:—*Held*, that the payment being illegal, the application must be granted.

A borough council appointed the defendant (a solicitor and the town clerk) to be clerk to the sanitary authority; and by a resolution his salary was fixed at a certain sum, "to include all legal charges, except for contentious business matters, travelling expenses, and payments out of pocket." Subsequently the council promoted a sewage scheme, which had not been contemplated when the defendant's salary was fixed, and in connection with this scheme he did work, partly in respect of contentious and partly in respect of non-contentious matters. On the completion of the sewage works the council passed a resolution that he be paid a sum of money for his services in connection with the scheme, and the money was duly paid to him:—*Held*, that the facts did not show an acceptance by the defendant under colour of his office or employment of a fee or reward other than his proper salary, wages, and allowances, within the meaning of s. 193, and that he was not liable to the penalty imposed by this section (*Edwards* v. *Salmon* (1889), 23 Q. B. D. 531; 54 J. P. 180). In this case, Lord HALSBURY, L.C., and, apparently, LINDLEY, L.J., also, approved, and Lord ESHER, M.R., reaffirmed the opinion expressed by the latter in *Burgess* v. *Clark* (1884), 14 Q. B. D. 735, that the word "allowances" in s. 193 includes extra payment for extra work, and is not limited to such matters as free use of a house or room or coals or gas. COTTON, L.J., in *Burgess* v. *Clark*, and FIELD, J., in the *Ramsgate Case*, *supra*, had considered that it was so restricted.

See, further, as to remunerating officers for extra work, note (*e*) to s. 189, p. 450, *ante*.

Recovery of penalty.

(*c*) These proceedings cannot now be taken without the consent in writing of the Attorney-General (The Public Health (Officers) Act, 1884, *post*). It would appear that the action must be brought within one year (31 Eliz. c. 5, s. 5; *Dyer* v. *Best* (1866), L. R. 1 Ex. 152; 30 J. P. 151). In *Todd* v. *Robinson* (1885), 14 Q. B. D. 739; 49 J. P. 278, it was held that the period of limitation did not run from the time when the contract was made, the defendant having remained an officer of the board, and having been interested in the contract down to the commencement of the action. In an action for penalties under this section the plaintiff is not entitled to administer interrogatories or to obtain discovery of documents. See *Whiteley* v. *Barley* (1887), 56 L. J. Q. B. 312; *Hunnings* v. *Williamson* (No. 1) (1883), 10 Q. B. D. 459; 47 J. P. 390; *Martin* v. *Treacher* (1886), 16 Q. B. D. 507; 50 J. P. 356; *Jones* v. *Jones* (1889), 22 Q. B. D. 425; *Hobbs* v. *Hudson* (1890), 25 Q. B. D. 232; 54 J. P. 520; *Salford (Corporation of)* v. *Lever* (1890), 24 Q. B. D. 695; 54 J. P. 519; *Saunders* v. *Wiel*, [1892] 2 Q. B. 321. *Cf. Derby (Mayor, etc. of)* v. *Derbyshire C. C.*, [1897] A. C. 550; 62 J. P. 4.

Officers entrusted with money to give security.

194. Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof.

If the services of an officer be rendered gratuitously and loss arises from the failure of a bank with which, by the direction of the authority, he lodges money belonging

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to them, the officer will not be responsible (*Colchester Union (Guardians of)* v. *Moy* (1893), 57 J. P. 265).

As to the position of an authority's treasurer when its clerk commits frauds upon it, see *Halifax Union* v. *Wheelwright* (1875), L. R. 10 Ex. 183; 39 J. P. 823.

The authority must determine for themselves what security they will deem sufficient. Generally that given by collectors is a bond with two sureties. There are several guarantee societies who will guarantee the fidelity of officers; but their policies usually contain many conditions, the neglect of which invalidates the security, and an omission is seldom discovered until an attempt is made to enforce the security. Moreover, they are generally determinable upon notice by the company, so that the security may fail at the time when the necessity for it becomes most urgent. The Government Officers (Security) Act, 1875, does not apply to these officers.

The P. H. A., 1848, s. 151, exempted the bond or security given on behalf of the officer from stamp duty; but that section was repealed by 35 & 36 Vict. c. 79, except as regards documents already executed.

Decisions as to guarantees.

With regard to the terms of the security, it should be made to be operative notwithstanding any change of tenure of the office, alteration of the salary in amount or mode of payment, change of district, or imposition of new duties upon the officer by subsequent legislation, for such contingencies, if not provided against, may destroy the liability of the sureties. See *Bamford* v. *Iles* (1849), 3 Ex. 380; 13 J. P. 652; *Holland* v. *Lea* (1854), 9 Ex. 430; 18 J. P. 201; *Frank* v. *Edwards* (1852), 8 Ex. 214; 22 L. J. Ex. 42; *Birmingham (Mayor of)* v. *Wright* (1851), 16 Q. B. 623; 20 L. J. Q. B. 214; *Worth* v. *Newton* (1854), 10 Ex. 247; 23 L. J. Ex. 338; *L. & N. W. Rail. Co.* v. *Whinray* (1854), 10 Ex. 77; 23 L. J. Ex. 261; *Oswald* v. *Berwick (Mayor of)* (1856), 5 H. L. Cas. 856; 25 L. J. Q. B. 383; *Clifton Dartmouth Hardness (Mayor of)* v. *Selly* (1857), 7 El. & Bl. 97; 26 L. J. Q. B. 90; *Pybus* v. *Gibb* (1856), 26 L. J. Q. B. 41; 6 El. & Bl. 902; *Cambridge (Mayor of)* v. *Dennis* (1858), El. B. & E. 660; 5 Jur. (N.S.) 265; *Portsea Island Union (Guardians of)* v. *Whillier* (1860), 24 J. P. 678; 2 El. & El. 755; *Skillett* v. *Fletcher* (1867), L. R. 2 C. P. 469; 31 J. P. 452; *Malling Union (Guardians of)* v. *Graham* (1870), L. R. 5 C. P. 201; *Holme* v. *Brunskill* (1877), 3 Q. B. D. 495; 42 J. P. 757; *Toames Co-operative Society* v. *Foley*, [1910] 2 I. R. 277; *R.* v. *Herron*, [1903] 2 I. R. 474; *Allis Chalmers Co.* v. *Fidelity and Deposit Co. of Maryland* (1914), 111 L. T. 327; 30 T. L. R. 445; *Hoole U. D. C.* v. *Fidelity and Deposit Co. of Maryland* (1916), 2 K. B. 568; 80 J. P. 353; *Debenhams, Ltd.* v. *Excess Insurance Co., Ltd.* (1912), 28 T. L. R. 505. See the facts of these cases (except the two last mentioned), and other cases referred to below, summarised in articles at 78 J. P. N. 122 *et seq.*

A bond for due discharge of a man's duties as assistant overseer does not cover his defalcations as clerk to the parish council (*Cosford Union* v. *Poor Law, etc. Officers' Mutual Guarantee Association* (1911), 75 J. P. 30; 103 L. T. 463).

A guarantee given for a clerk appointed to carry out the ordinary duties of the clerk to a district council does not cover payment of wages to men employed under the supervision of the surveyor to the council (*Wembley U. D. C.* v. *Poor Law, etc. Officers' Mutual Guarantee Association* (1901), 65 J. P. 330).

In *Bramley Union* v. *The Guarantee Society* (1900), 64 J. P. 308, a board of guardians resolved to increase their clerk's salary from £255 to £410, to include remuneration for election work. As directed, he forwarded the resolution to the L. G. B. for their approval, but suppressed the concluding words. The Board approved the truncated resolution submitted to them, and for some years the clerk drew both the larger salary and fees for elections. It was held that he had committed a breach of duty, that there was no resolution of the guardians approved by the L. G. B., and that therefore the guardians had been induced to pay the larger salary without any authority for so doing, and were entitled to recover from the clerk's sureties the excess received by him above what he could have claimed at his old rate of remuneration.

It is beyond the scope of the present work to enter into a detailed examination of the law relating to the discharge of sureties; a few of the cases may, however, be referred to. As to the effect of failure to give notice of an officer's former delinquencies, see *Lawder* v. *Simpson* (1873), 21 W. R. 439; *Smith* v. *Bank of Scotland* (1813), 1 Dow, 272; *London General Omnibus Co.* v. *Holloway*, [1912] 2 K. B. 72.

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It is a general principle that on a continuing guarantee for the honesty of a servant if the master discovers that the servant has been guilty of dishonesty in the service, and instead of dismissing the servant chooses to continue him in his employment without the knowledge and consent of the surety, express or implied, he cannot afterwards have recourse to the surety to make good any loss which may arise from the dishonesty of the servant during the subsequent service (*Phillips* v. *Foxall* (1872), L. R. 7 Q. B. 666; 37 J. P. 37; *Saunderson* v. *Aston* (1873), L. R. 8 Ex. 73). As to the application of this principle to local authorities, see *Lawder* v. *Lawder* (1873), I. R. 7 C. L. 57; *Byrne* v. *Muzio* (1881), 8 L. R. Ir. 396; *Caxton* v. *Dew* (1899), 68 L. J. Q. B. 380; 80 L. T. 325; *Durham Corporation* v. *Fowler*, *infra*.

It would appear that the omission of a local authority to carry out the regulations prescribed by the following sections will not release the sureties; nor a statement of them which does not amount to a warranty (*Benham* v. *United, etc. Assurance Co.* (1852), 7 Ex. 744). As to the effect of an inaccurate representation of the sums to be collected, see *Towle* v. *National Guardian Assurance Co.* (1861), 3 Gif. 42: 30 L. J. Ch. 900, where it was held that a statement of the manner in which the accounts of the collector were to be checked, etc., did not amount to a warranty, and did not release the sureties in the event of its not being carried out. Mere laches of the obligee or a mere passive acquiescence by him in acts which are contrary to the conditions of a bond, is not sufficient of itself to relieve the sureties (*Mansfield Union* v. *Wright* (1882), 9 Q. B. D. 683; *Kingston-on-Hull Corporation* v. *Harding*, [1892] 2 Q. B. 494). The plaintiffs sued the defendants as sureties on two bonds the first given to the plaintiffs as urban sanitary authority to secure the due performance of the duties of a collector of general district rates, and the second given to them as a municipal corporation to secure the performance by the same person of his duties as collector and receiver of borough rates. The evidence showed that the plaintiffs had acquiesced in an irregular mode of accounting on the part of the collector, but that the collector was never suspected of dishonesty until a year after the date of the second bond, when defalcations were discovered, and he was dismissed. The jury found,—first, that the plaintiffs had permitted their collector to retain moneys in his hands for a longer period than a week (which was contrary to s. 195, *post*, p. 461, to a condition of the bonds, and to a resolution passed by the plaintiffs before the bonds were given); and, secondly, that they had permitted him to mix the proceeds of the different rates. It was held that the plaintiffs' acquiescence in the collector's irregular mode of accounting was not such connivance as to discharge the sureties; that upon the evidence there were no other questions which the judge could have been properly required to leave to the jury; and that on the facts proved and on the findings there was no defence to the action. It was held also that on the construction of the second bond the sureties were liable for the collector's failure to pay over moneys received by him independently of any question as to the validity of the rate (*Durham (Mayor, etc. of)* v. *Fowler* (1889), 22 Q. B. D. 394; 53 J. P. 374; and see *Donegal C. C.* v. *Life and Health Assurance Co.*, [1909] 2 I. R. 700, 712). In *Tullamore U. D. C.* v. *Robins* (1914), Ir. L. T. 180, a clerk had failed to account and there were defalcations in the accounts.

It was held that the failure to account constituted a breach of the conditions in the bond and the sureties were held to be liable even though the defalcations occurred prior to the date of the bond but subsequent to the appointment of the clerk.

As to the power of the sureties to put an end to their suretyship, see *Burgess* v. *Eve* (1872), L. R. 13 Eq. 450; *Lloyds* v. *Harper* (1880), 16 Ch. D. 290; *Beckett* v. *Addyman* (1882), 9 Q. B. D. 783; *Re Crace, Balfour* v. *Crace*, [1902] 1 Ch. 733.

As to the admissibility in evidence of the collector's books in an action against his sureties, see *Abbeyleix Guardians* v. *Sutcliffe* (1890), 26 L. R. Ir. 332.

As to the effect of a stipulation in a bond by which the creditor undertook to prosecute the defaulting debtor, see *London Guarantee Co.* v. *Fearnley* (1880), 5 App. Cas. 911; 45 J. P. 4.

As to the effect of the lunacy of a collector, see *Grove* v. *Johnson* (1889), 24 L. R. Ir. 352.

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Officers to account.

195. Every officer and servant appointed or employed under this Act by a local authority (*a*) shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how, and to whom, and for what purpose such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts (*b*).

And every such officer or servant, employed in the collection of any rate made under this Act shall, within seven days (*c*) after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct (*d*), deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them.

(*a*) Note the generality of these terms. See *Att.-Gen.* v. *De Winton*, cited in the notes to s. 189, as to the status of a borough treasurer.

(*b*) The requisition of course applies when the term of office has expired; but the authority will probably make some additional regulations for payments at other times. See the analogous provisions in the Municipal Corporations Act, 1882, s. 21.

Falsification of accounts.

Falsification of accounts by a clerk, officer, or servant is punishable under 38 & 39 Vict. c. 24, s. 1. As to what amounts to a false entry, see *R.* v. *Williams* (1899), 63 J. P. 103; 79 L. T. 739. A person may be found guilty although he does not make the false entry with his own hand (*R.* v. *Butt* (1884), 15, Cox C. C. 564). An indictment under this Act alleged in each count that the defendant did make and concur in making a false entry in a certain account, but there was no allegation that that account belonged to or was in the possession of the employer, or that it had been received by the defendant for or on behalf of his employer. It was held that the indictment was bad on that account (*R.* v. *Palin*, [1906] 1 K. B. 7; 69 J. P. 423). See also *R.* v. *Drewitt* (1904), 69 J. P. 37; 21 T. L. R. 164; *R.* v. *Oliphant*, [1905] 2 K. B 67; 69 J P. 230.

In *G. W. Rail. Co.* v. *London and County Bank*, [1901] A. C. 414, it was decided that a bank who cashed a crossed cheque obtained by a collector from a ratepayer by false pretences were liable to the ratepayer for the amount of the cheque. This case and previous cases, and also a later case (*Capital and Counties Bank, Ltd.* v. *Gordon*, [1903] A. C. 240) decided that a bank was not protected by the Bills of Exchange Act, 1882, s. 82, unless (1) it acted in good faith and without negligence; (2) it received payment for a customer; and (3) the bank only received such payment. In the *Great Western Case*, *supra*, it was found that the bank acted in good faith and without negligence; but it was held that the collector who had no account or pass-book with them was not a "customer." In the *Capital and Counties Bank Case*, *supra*, it was held that the bank did not receive payment of a crossed cheque for a customer if it credited its customer's account with the amount of the cheque before receiving payment thereof. The effect of the latter decision has now, however, been removed by the Bills of Exchange (Crossed Cheques) Act, 1906, and see also *Morison* v. *London, County and Westminster Bank*, [1914] 3 K. B. 356; 111 L. T. 114.

(*c*) This is a very precise direction, but one not easy to carry out universally. The authority should, however, pay great attention to it. More confidence can be felt as to the due collection from a strict observance of the provision than from any guarantee. See *Durham (Mayor, etc. of)* v. *Fowler*, p. 460, *ante*.

(*d*) The authority should require an account of the collection and deposit of the rates to be laid before them at short intervals. See s. 250, *post*, p. 550, as to the accounting of these officers to the auditor.

Section 196.

Summary proceedings against defaulting officers.

196. If any officer or servant appointed or employed under this Act by a local authority (*a*)—

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys as and when required by this Act, or

Fails within five days after written notice (*b*) in that behalf from the local authority to deliver up to the local authority all books papers writings property and things in his possession or power, relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall thereupon summon the party charged to appear before the court of summary jurisdiction (*c*).

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business (*d*), if it appears to the court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts books papers writings property or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers receipts books papers writings property and things in respect of which the charge was made: Provided that a person shall not be imprisoned under this section for a period exceeding six months (*e*).

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever (*f*).

(*a*) These words apply to every local authority, whether urban or rural.

(*b*) See ss. 266 and 267, *post*, p. 593, as to the authentication and service of this notice, which should be signed by the clerk.

(*c*) See the definition, *ante*, p. 36.

Service at place of abode.

(*d*) As defaulting officers frequently abscond, this mode of service is very usual. By the *last place* of abode is meant the then present place of abode if the defaulter has any; the last which he had if he has ceased to have any (*per* COLERIDGE, J., in *R.* v. *Evans* (1850), 19 L. J. M. C. 151). The words of the text, however, are the *last known* place of abode. As to these words, see *R.* v. *Higham* (1857), 7 El. & Bl. 557; 26 L. J. M. C. 116; and see also *R.* v. *Brown* (1859), 21 J. P. 5; 1 L. T. 29; *R.* v. *Smith* (1875), L. R. 10 Q. B. 604; 39 J. P. 613; *R.* v. *Cambridgeshire JJ.* (1880), 44 J. P. 168; *R.* v. *Lee* (1888), 52 J. P. 344; 58 L. T. 384; *R.* v. *Farmer* (or *Salford JJ.*), [1892] 1 Q. B. 637; 56 J. P. 341.

Imprisonment.

(*e*) Under the P. H. A., 1848, s. 39, there was no limitation of time for the imprisonment; so that the prisoner, if obdurate, might have had to remain in prison for life; but, if he rendered an account and could not pay the balance, he could have been committed to prison for three months only. This distinction does not now remain. Whether the provision be imperative upon the justices may be questioned. Upon a similar provision in 17 Geo. 2, c. 38, s. 2, the court held that it was in their discretion whether they would commit to goal an overseer who neglected to account (*R.* v. *Norfolk JJ.* (1832), 4 B. & Ad. 238). See s. 3 of the Criminal Justice Administration Act, 1914, as to reduction of term of imprisonment on part payment.

The failure to render an account or give up books is a continuing offence, and, therefore, the limitation contained in the S. J. A., 1848, s. 11, will not apply. Indeed, the order of justices under this section, so far as it applies to the delivery of books, is not penal, but only in the nature of a distress; see *Mayer* v. *Harding*

(1867), 32 J. P. 421 ; 17 L. T. 140. The neglect to pay over the moneys is a substantive offence, and to this the S. J. A., 1848, s. 11, may apply. **Note to Section 196.**

The Debtors Act, 1869, does not operate to prevent the imprisonment of the defaulter. See *R.* v. *Pratt* (or *Ex parte Cole*) (1870), L. R. 5 Q. B. 176 ; 34 J. P. 150. It has been decided that a discharge in bankruptcy operates to prevent an auditor from enforcing his certificate of a sum due from an overseer, the sum being a debt and provable in the bankruptcy, although there were special means provided for enforcing payment, viz., by distress and imprisonment (*R.* v. *Martin* (*or Master*) (1869), L. R. 4. Q. B. 285).

It may be a serious question whether this section is affected by the S. J. A., 1879. Section 6 of that Act provides that where by any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and recoverable accordingly. Section 35 provides that a person shall not be imprisoned in respect of a civil debt except after proof of means on judgment summons. The proceedings to recover money under this section in the text seem to fulfil all the requirements of s. 6 of the Act of 1879, and if so, that section would seem to supersede the procedure prescribed in this text.

A warrant of distress might be issued : see s. 25 of the Criminal Justice Administration Act, 1914.

(*f*) It is a question not yet settled by authority whether a committal to prison will operate as a release of the defaulter's own liability. See the Debtors Act, 1869, s. 5, which is incorporated by the S. J. A., 1879, s. 35, and *Evans* v. *Wills* (1876), 1 C. P. D. 229 ; 40 J. P. 552, decided with reference to that section. Release of offender's liability.

Mode of conducting Business.

197. Every urban authority (*a*) shall from time to time provide (*b*) and maintain such offices (*c*) as may be necessary for transacting their business, and that of their officers and servants (*d*) under this Act. Urban authority to provide offices.

(*a*) It will be observed that the words are imperative, and that the section applies to urban authorities only. A rural sanitary authority, being formerly the same body as the board of guardians (see s. 9), were enabled to use the board room and offices of the union. Offices of rural district council.

The present rural district councils are distinct from boards of guardians, but (singularly) they possess no express statutory power for the provision of a separate meeting place and offices. Under the L. G. A., 1894, s. 59 (3), however, they are entitled to use at reasonable hours for the purposes of their meetings and proceedings the board room and offices of any board of guardians for the union comprising their district. The question led to friction in some cases, whether under this provision the officers of a rural district council had any right to use the guardians' offices.

The L. G. B. expressed the opinion, however, that the power of a rural district council to provide themselves with separate offices must be presumed. In a few cases, to make the legal position perfectly clear, the L. G. B. complied with applications by rural district councils (under s. 276, *post*), for the powers of s. 197.

An urban authority who are also a municipal corporation under the Municipal Corporations Act, 1882, are empowered to employ the somewhat wider powers of that Act for the provision of offices, town halls, and other municipal buildings. Such buildings usually include accommodation for the purpose of discharging the duties of the corporation as an authority under the Public Health Acts, and the circumstances may be such that the estimated cost of erection should be divided so that part may fall upon the general district rate. If, however, the whole cost is treated in the first instance as one incurred under the Municipal Corporations Act, 1882, a payment in the nature of a rent may be made from the general district rate to the borough fund. Powers under Municipal Corporations Act, 1882.

(*b*) Offices may be erected or existing buildings may be purchased or rented. Section 175, *ante*, p. 412, enables the urban authority to procure a site for new buildings. If the estimated cost of a scheme is heavy a loan should be obtained, Procedure for erection of offices.

Note to Section 197.

as to which see. ss. 233, 234, *post*, pp. 521, 527. Any agreement for the acquisition of a site, in such a case, should be provisional only, seeing that the sanction of the M. of H. is necessary. Any application should be made by the clerk to the council, and should be accompanied by a copy of the resolution directing it, plans and elevations of the proposed buildings, an explanation of the suggested allocation of the rooms in the building to their several purposes, an estimate in detail, and particulars (in forms supplied) of the debt and assessable value of the district. It will be necessary to strictly comply with any building byelaws in force in the district. The terms usually allowed for the repayment of loans of this character are sixty years for land, thirty for buildings, and fifteen for furniture and fittings.

Purchase of existing buildings.

In the case of an urban district council proposing to acquire existing buildings and adapt them for public offices, the council should (in case a loan is required) furnish a valuation of the buildings, and a report by an expert upon their condition, also with particulars of their age, the structural works required to be carried out, and the precise scheme of utilisation decided upon. See also next note.

Town hall.

(*c*) The section does not enable an urban district council to provide a town hall properly so called. If they are the council of a borough they have the powers of the Municipal Corporations Act, 1882, in this behalf. See note (*a*) above. In other cases if it is desired to provide a town hall or offices including accommodation for public meetings, it is competent to the council to apply to the M. of H. under the L. G. A., 1894, s. 33, for the wider powers conferred upon a parish council by s. 8 (1) (a), (b) of that Act.

What offices can be provided.

The offices to be provided under the section must be for purposes of the urban council and their officers only. They have therefore no authority to provide accommodation for such persons or bodies as magistrates, assistant overseers, relieving officers, registrars of births and deaths, inspectors of weights and measures, or collectors of poor rates. The same limitation would not, however, apply in the case of the purchase of an existing building which afforded the office accommodation required by the council in addition to other accommodation. The M. of H. do not refuse to sanction loans for the acquisition of such buildings, and under s. 177 portions not required may be let.

As to the use of a local authority's buildings and offices by trade unions and other bodies, see a L. G. B. Circular of March 23rd, 1908; as to their use by insurance committees see the National Insurance Act, 1911, s. 59 (4), and as to their use by approved societies, see *ibid.*, s. 27 (2), and a L. G. B. Circular of December 5th, 1912.

Residences for employees.

(*d*) An urban district council have no power to provide *residences* for their officers and servants, but in a case in which the accommodation proposed to be provided for the surveyor of a council in connection with the provision of public offices communicated with the other part of the building, and the surveyor was to act as caretaker, no objection was raised by the L. G. B. Also in some cases loans have been sanctioned to rural councils for the provision of houses for road men.

Proceedings, etc. of urban authority being the council of a borough.

198. Where an urban authority are the council of a borough, they shall, subject to the provisions of this Act (*a*), exercise and execute their powers authorities and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England (*b*).

(*a*) Such as, *e.g.*, the appointment of committees for the purposes of the Act, see s. 200.

(*b*) An opinion formerly prevailed that where corporate boroughs adopted the previous Acts relating to public health and local government, and so became local boards of health, a new body was created, so that the corporation fulfilled two separate and distinct functions. This opinion was to some extent supported by *R.* v. *Gloucester*, *ante*, p. 457, and *Anthony* v. *Brecon Markets Co.* (1872), L. R. 7 Ex. 399; 31 J. P. 200. But in *Andrews* v. *Ryde* (*Mayor, etc. of*) (1874), L. R. 9 Ex. 302, it was decided that they were not two distinct bodies, and that the corporate body was the local board, or, in other words, that the local board had no existence,

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so that every contract, whether with the corporation acting as a local board, or with the corporation alone, was essentially made with the corporation. Hence no separate seals were required, nor separate liability incurred. See also *Pedder* v. *Preston* (*Mayor, etc. of*) (1862), 12 C. B. (N.S.) 535; 31 L. J. C. P. 291, which was in conformity with that decision.

The proceedings at the meetings of the council of a borough are regulated by the Municipal Corporations Act, 1882, s. 22, and Sched. 2.

Meetings, etc. of urban authority not being the council of a borough.

199. Every urban (*y*) authority (not being the council of a borough) (*z*) shall hold an annual meeting (*a*), and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any improvement commissioners (*b*) may, if they think fit, adopt all or any of such rules.

(*y*) This section is now applied to rural as well as urban district councils (other than borough councils) by the L. G. A., 1894, s. 59, *post*.

(*z*) As to borough councils, see the preceding section.

(*a*) See Sched, I., r. 11, *post*, and the notes to that Schedule. This meeting is required to be held as soon as convenient after April 15th in each year, but the L. G. B. expressed the view that, subject to any regulation which an urban district council may have made under the Schedule, the annual meeting may be held on the day of the usual monthly meeting next after April 15th.

(*b*) See the definition in s. 4, *ante*, p. 4; but in so far as the powers of improvement commissioners as sanitary authorities are concerned, the commissioners have now become urban district councils.

Power of urban authority to appoint committees. [Repealed except as to boroughs by 56 & 57 Vict. c. 73, s. 89.]

200. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee (*a*): Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract (*b*), and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

This section, except so far as it applies to boroughs, has been repealed by s. 89 and Sched. II. of the L. G. A., 1894, and the appointment of committees of district councils other than the councils of boroughs is now regulated by ss. 56 and 57 of that Act, *post*.

Committees of borough councils;

(*a*) The P. H. A., 1848, s. 36, required a local board to approve the acts of a committee, but there was a doubt as to the effect of this approval. See *Firth* v. *Staines*, [1897] 2 Q. B. 70; 61 J. P. 452, and *R.* v. *Chapman*, [1918] 2 K. B. 298; 82 J. P. 229. See, however, *Bowyer* v *Mather*, [1919] 1 K. B. 419; 83 J. P. 50, where these cases were distinguished. There is no such requirement in the text; but the urban authority may restrain the committee from acting wholly or partially without their sanction, and the proviso contains a statutory restraint upon the committee as to sundry matters of importance.

As to a council withdrawing powers delegated to a committee, see *Huth* v. *Clarke* (1890), 25 Q. B. D. 391; 55 J. P. 86.

As to the competence of a committee to determine the engagement of an employee when the powers of the council have been delegated to such committee, see *Tottenham U. D. C.* v. *Hillier* (1920), 42 M. C. C. 221.

Note to Section 200.

Powers, etc. of.

Under the previous Acts a local board appointed a committee, and afterwards passed a resolution approving the minutes of the committee resolving that certain streets should be paved; notices were then given, and, on default of the owners, the board passed a resolution approving a resolution of the committee that the work should be done by the surveyor. It was held that none of these acts of the Board were of such a nature as to require approval in the statutory manner, *i.e.*, under seal and the hands of five members (*Barnsley L. B.* v *Sedgwick* (1867), L. R. 2 Q. B. 185; 31 J. P. 165).

Where a board constituted by an Act of Parliament is authorised by it to delegate any of its powers to a committee, the powers so conferred on the committee must be exercised by them acting in concert; and it is not competent to the committee to apportion among its members the duties delegated to it; one of them acting alone pursuant to such apportionment, cannot justify his acts under the Act of Parliament (*Cook* v. *Ward* (1877), 2 C. P. D. 255; 41 J. P. 439). This decision was distinguished where the resolution of a sub-committee had been confirmed by a sanitary committee whose resolution was subsequently confirmed by the town council: see *Agnew* v. *Manchester Corporation* (1902), 67 J. P. 174; 1 L. G. R. 9, and other cases cited on p. 98, *ante*; and see *Hussey* v. *Exeter Corporation* (1918), 82 J. P. 67; 87 L. J. Ch. 443.

The Municipal Corporations Act, 1882, s. 22, enables a borough council to appoint out of their own body committees "for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval." It appears to be doubtful whether such approval is necessary in the case of a committee appointed *for the purposes* of this Act; but probably it is not necessary: *cf. Eaton* v. *Basker*, *infra*.

A borough councillor appointed a member of a committee under s. 22 of the Act of 1882, can resign such membership (*R.* v. *Sunderland Corporation*, [1911] 2 K. B. 458; 75 J. P. 365).

An Irish county council purported to elect a County Pensions Committee under the Old Age Pensions Act, 1908, s. 8 (1), without having served notice on the members of the council as required by a certain Irish Act. M. was then elected chairman of the Pensions Committee. On an application for a writ of *quo warranto*, it was held that the committee being improperly elected, there was no office to which M. had been elected, and, therefore, *quo warranto* could not issue (*R.* v. *M'Donald*, [1913] 2 I. R. 55).

(*b*) In *Eaton* v. *Basker* (1881), 7 Q. B. D. 529; 45 J. P. 191, 616, a contract was entered into by a joint committee representing the council of a borough and the authorities of two other districts (which before action became merged in the borough whose council took over their liabilities). It was held that the council were bound by the contract as having been made by their agents, but that as it was made with the committee as such and not with the members of it individually, the latter were not personally liable upon it. But see generally as to the position of a council in respect of a contract purported to be made by a committee the cases collected in note (*a*) under s. 174 at p. 400, *ante*.

Power of rural authority to delegate their powers and duties to a committee. [Repealed by 56 & 57 Vict. c. 73, s. 89.]

201. *A rural authority may, at any meeting specially convened for the purpose, delegate for the current year of their office all their powers to a committee consisting wholly of their own members; provided that one-third at least of such committee shall consist of ex officio guardians, but in case an adequate number of such ex officio guardians does not exist, then the number deficient shall be made up of elected guardians; and any such committee shall have the powers by this Act vested in the rural authority by which it was formed, and shall be deemed to be during such year of office as aforesaid the rural authority of the district.*

This section was repealed by the L. G. A., 1894, s. 89, and Sched. II. See now *ibid.*, ss. 56 and 57, *post*.

202. A rural authority (*including any committee so formed as aforesaid*) (*a*) may, at any meeting specially convened for the purpose, form for any contributory place (*b*) within their district a parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place (*c*), and qualified in such other manner (if any) as the authority forming such parochial committee may determine. **Section 202.** Power of rural authority to form parochial committees.

A rural authority (*including any committee so formed as aforesaid*) (*a*) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee, except powers which the rural authority could exercise within such contributory place (*d*).

A parochial committee shall be deemed to be the agents of the authority (*e*) which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

See also the L. G. A., 1894, s. 15, *post*, under which a rural district council may delegate to a parish council any power which may be delegated to a parochial committee. Where a parish council act as a parochial committee by delegation from the district council, they are to have the services of the clerk to the district council, unless that council otherwise direct: see the L. G. A., 1894, s. 17 (5). See also the Commons Act, 1899, s. 4, *post*, Vol. II., under which a rural district council may delegate to a parish council any powers of management conferred by Part I. thereof.

(*a*) These words must be regarded as repealed owing to the repeal of s. 201.

(*b*) See s 229, *post*, p. 510, as to what is "a contributory place." There is no authority for the appointment of a joint parochial committee, *i.e.*, a committee for more than one contributory place. See, however, s. 57 of the L. G. A., 1894, in connection with s. 15 thereof.

(*c*) No amount of rate is required. The authority may prescribe some other qualification. Residence in the place or within a prescribed distance might be one qualification. Where there is a parish council, and the committee is formed in part of members of the district council, the other members must be, or be selected from, the members of the parish council (The L. G. A., 1894, s. 15, *post*).

(*d*) Hence the committee can make no appointment of officers. But see, *supra*, as to making use of the clerk to the district council. The authority can only appoint officers for the whole of their district, though probably they can assign to them duties to be performed only in the district of the parochial committee. It will be seen hereafter (see s. 229) that the salaries of all officers are chargeable as general expenses, though the M. of H. possess power under the P. H. A., 1890, s. 49 (as Powers of such committees.

Note to Section 202.

regards rural districts in which the section is in force) to make *any* expenses "special." See note under s. 229, *post*, p. 512.

(*e*) These words raise some difficulty. If the strict rule of agency be followed, the committee cannot act except according to the powers delegated to them by the authority; and, if they exceed them, must obtain a ratification of their act. But probably a greater latitude of action is intended to be exercised by them.

The L. G. B. expressed the opinion that a parochial committee, without any delegated powers of a rural authority, and with functions restricted to the making of recommendations, is not such a committee as the section contemplates.

As to the powers which may properly be delegated to such a committee, the Board mentioned the following, and the Ministry of Health probably hold the same views.

1. To inspect the parish from time to time with a view to ascertaining whether any works of construction are required or any nuisance exists which should be abated.

2. To superintend the execution and maintenance of any works which may be required or have been provided for the special use of the parish, and to give directions for any repairs or other matters requiring immediate attention in relation to such works which fall within the reasonable scope of the authority which they possess as agents of the sanitary authority.

3. To consider complaints of any nuisances and the action of the medical officer of health or inspector of nuisances thereon, and to inform those officers of any nuisances requiring their attention, and to give such directions for the abatement of the same in cases of urgency as the circumstances may seem to require.

4. To examine and certify all accounts relating to expenditure chargeable as special expenses to the parish.

5. To report to the sanitary authority from time to time the several matters requiring their attention and the manner in which their officers and servants have discharged their duties.

It will be observed that though the committee may incur expenses, they may only do so when expressly authorised, and then only within the prescribed limit; moreover, they must report such expenses to the rural authority—they cannot issue a precept for them.

Casual vacancies in committees may be filled.

203. Any casual vacancy occurring by death, resignation, disqualification, or otherwise in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

It is presumed that the limitation of time contained in this section is directory only. See *R.* v. *Sparrow* (1740), 2 Stra. 1123; *R.* v. *Norwich* (*Mayor of*) (1830), 1 B. & Ad. 310; 8 L. J. K. B. 359; *R.* v. *Denbighshire* (1803), 4 East, 142; *Caldow* v. *Pixell* (1877), 2 C. P. D. 562. From these and similar cases a general rule may be deduced that when the time prescribed for the performance of an act is not essential to its validity, and there is no provision for non-compliance, the limitation of time is merely directory.

Meetings and proceedings of committees. [Repealed by 56 & 57 Vict. c. 73, s. 89.]

204. *Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee), in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.*

This section was repealed by the L. G. A., 1894, s. 89, and Sched. II.

Inspectors may attend meetings of certain authorities.

205. Inspectors of the Local Government Board (*a*) may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board (*b*).

The local authority of the district of Oxford (*c*) shall not, for the purposes of this section, be deemed to be a local board. Section 205.

(*a*) See s. 296, *post*, p. 629, and the Local Government Board Act, 1871, s. 3, in App. I., *post*, Vol. II.

(*b*) They have no power to take part in the proceedings so as to vote on any matter. They can hear what passes, and can advise when consulted. They can also convey any message from the Ministry.

As to the definition of local board, see s. 4, *ante*, p. 4.

(*c*) The Oxford local board was abolished by the City of Oxford Order, 1889, their powers being transferred to the corporation.

206. Every local authority shall make an annual report, in such form and at such time as the Local Government Board may from time to time direct, of all works executed, and of all sums received and disbursements made by them under and for the purpose of this Act during the preceding year, and shall send a copy to the Local Government Board: An urban authority shall also publish a copy in some local newspaper circulating in their district. Local authority to report.

In view of the financial statements required from urban and rural district councils under other provisions, no separate statement under this section has hitherto been required by the Ministry of Health or their predecessors the L. G. B.; and, even in the case of borough councils whose accounts are not subject to audit by a district auditor, the department consider the information contained in the returns under the Local Taxation Returns Acts, 1860 and 1877, and the Municipal Corporations Act, 1882, and the publication of accounts required by the latter Act and s. 246, *post*, p. 540, to be quite sufficient for practical purposes.

PART VI.

RATING AND BORROWING POWERS, ETC.

EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for (*a*), shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act (*b*), subject to the following exceptions; (namely,) Mode of defraying expenses of urban authority.

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts (*c*) were at the time of the passing of this Act payable out of the borough fund or borough rate (*d*), then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) (*e*) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate (*f*) leviable by them as such commissioners throughout the whole of their district (*g*), then the expenses incurred by that authority in the

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execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving sewering or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid (*h*).

Expenses otherwise provided for.

(*a*) See the saving in s. 319, *post*, p. 654, as to special district rates heretofore made and the charges thereon.

By a local Act (58 Geo. 3, c. lxxxi), certain persons therein mentioned were appointed commissioners for the purpose of paving the footways, and cleansing, lighting, and watching the streets in the town of M. By s. 59 "the said commissioners shall and are hereby authorised and required once in every year to rate and assess any sum not exceeding one shilling in the pound, upon or in respect of all houses, etc., being within the limits of the said town." By s. 57, "all and every person or persons paying the rates and assessments hereby authorised to be levied within the said town, shall be, and they and every of them is and are hereby exempted and discharged from all charges and expenses of paving, lighting, watching, cleansing, or fencing off any part or parts of the footways and crosspaths of the said town and borough." By the P. H. A., 1872, the borough of M. (within which was the town of M.) became an urban sanitary district, and the corporation the urban sanitary authority. By s. 16, all expenses incurred or payable by an urban sanitary authority under the Sanitary Acts, were to be defrayed in the case of the council of a borough out of the borough fund or borough rate. By the amending Act of 1874, all the powers and duties of the commissioners under the local Act, were transferred to the council. After the passing of the present Act, the council, as the urban sanitary authority for the borough, made a general borough rate to meet expenditure which included the paving, lighting, and cleansing of the town. A ratepayer who occupied a house within the borough, but outside the town, of M., appealed on the ground that the rate was made in part for raising money towards defraying the expenses of carrying the local Act into execution. It was held that the rate was invalid (*Monmouth (Mayor, etc. of)* v. *Monmouth (Overseers of)* (1878), 38 L. T. 612).

As to the misapplication of funds and illegal charges, see the note to s. 218, *post*, p. 499.

(*b*) See s. 210, *post*, p. 473.

(*c*) See the definition in s. 4, *ante*, p. 35.

Expenses payable out of borough rate.

(*d*) "Payable" means "legally payable." In some boroughs, owing to the difficulty in the interpretation of the P. H. A., 1872, the expenses had not been charged in point of fact to the borough fund or rate; in some other cases they had been wrongfully charged in the manner provided by this section. These different erroneous charges were rendered valid by s. 338, *post*, p. 665, but that section was repealed by the S. L. R. A., 1883. It is, therefore, necessary in some cases to determine whether before the Act the expenses in question were or were not legally payable out of the borough fund or rate. For an instance in which they were held not to be so payable, see *Walsall (Overseers of)* v. *L. & N. W. Rail. Co.* (1879), 4 App. Cas. 467; 43 J. P. 748; see notes to s. 211, *post*, p. 478.

As to the borough fund and rate, and the charges which may legally be paid out of them, see the Municipal Corporations Act, 1882, ss. 139—149, and Sched. V.

(*e*) See the definition in s. 4, *ante*, p. 4.

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(*f*) See s. 210, *post*, p. 473, as to what is a general district rate. The Crediton Improvement Act, 1836, extended to the town of C., in which a part of the parish of C. was embraced. The commissioners were authorised to levy an annual rate on the occupiers of dwelling-houses within the town not exceeding 2*s.* 1*d.* in the pound, and all persons assessed under the Act were released from liability for the repairs of highways outside the town. The town became an urban district under the P. H. A., 1872, and the expenses incurred by the commissioners as the urban authority in the execution of the Sanitary Acts were, at the time of the passing of this Act, payable out of rates in the nature of general district rates leviable by them throughout the whole of their district. By an order of the county council (confirmed by the L. G. B.) the urban district was extended so as to include the part of the parish of C. which was outside the district at the time of the passing of the L. G. A., 1894, and it was provided that the district should be deemed to have been extended before the time of the passing of the Act of 1894. The district council thereafter made a rate for the whole district headed the "C. Improvement Rate for the year," etc., and among the persons assessed was the appellant who occupied a house in the old area. The rate exceeded the amount in the pound limited by the Improvement Act, and was made to defray expenses to be incurred under the Public Health Act, including the purposes for which rates were leviable under the Improvement Act; and was for the repair of highways in the old area, and in the added area. It was held that the rate was a good one, and was rightly headed (*Hill* v. *Crediton U. D. C.* (1899), 80 L. T. 861; and see *Manly* v. *Young*, [1895] 2 I. R. 676).

Expenses payable out of improvement rate.

By s. 181 of the Towns Improvement Clauses Act, 1847, the owners of property not exceeding £10 in annual value are to be rated, instead of the occupiers, to the rate directed by the special Act to be made, and there is no provision for reduction. By s. 65 of the R. Improvement Act, 1865, which incorporates the above provision, the commissioners were empowered to rate the occupiers of all hereditaments in the town at not more than 2*s.* 6*d.* in the pound, provided that a house not within 100 yards of a lamp should be rated at one-fourth. In 1912 the R. council, as successors to the commissioners, levied a rate exceeding 2*s.* 6*d.* in the pound, and headed "R. Improvement Act, 1865, and Public Health Act, 1875, sections 207 and 227; Local Improvement Rate in the nature of a General District Rate," on the owners of properties not exceeding £10 in value, without allowing them any reduction. It was held that the rate was one "directed to be made by the special Act," and was in the nature of a general district rate, and was properly levied on the owners (*Ross U. D. C.* v. *Daniels* (1913), 77 J. P. 456).

(*g*) These words remove an ambiguity which arose upon the P. H. A., 1872, s. 16, in the proviso: it must be observed also that the reference is as to what is legally payable, and not as to what had been so charged in fact.

"Leviable throughout whole district."

Section 211, *post*, p. 478, provides that general district rates shall be made and levied on the occupiers of all kinds of property for the time being by law assessable to any rate for the relief of the poor; and further, that the occupier of any land used as a railway constructed under the powers of an Act of Parliament for public conveyance shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof. By 28 Geo. 3, c. 64, and 34 Geo. 3, c. 104, commissioners appointed under those Acts, called improvement commissioners, were empowered to levy a rate not exceeding 1*s.* in the pound on the annual value of all houses, buildings, and hereditaments within the town of Cambridge, for the purpose of carrying into execution certain specified improvements mentioned in those Acts. At the time of the passing of those Acts, and until 1856, the colleges and halls of the University, and also the corporation, were extra-parochial and not assessable to the above-mentioned rate. The respondents, acting as improvement commissioners and as the urban sanitary authority, assessed the appellants, who were owners of land and property used as a railway, at the full net annual value of such land and property, for the purpose of carrying into execution the provisions of the Cambridge Improvement Acts and of the P. H. A., 1875. It was held that the rate leviable by virtue of the Cambridge Improvement Acts was not "a rate in the nature of a general district rate leviable throughout the whole of the district" within the meaning of s. 207, and that as regards so much

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of the rate levied on the appellants as was necessarily applicable to the purposes of the Public Health Act, the appellants were liable to be assessed in the proportion of one-fourth only of the net annual value of their land and property used as a railway within the district of the respondents (*G. E. Rail. Co.* v. *Cambridge Improvement Commissioners* (1889), 61 L. T. 243).

Expenses payable out of several rates.

(*h*) This paragraph applies to cases where there was a local Act in force in the district, or where the borough had adopted some of the provisions of 11 & 12 Vict. c. 63, or 21 & 22 Vict. c. 98. The charges for the future are to continue to be charged in like manner as they were legally charged before the passing of the Act.

Power in certain cases by Provisional Order to alter mode.

208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts (*a*), the Local Government Board may, on the application of such authority (*b*), or of any ten persons rated to the relief of the poor within the district, declare by Provisional Order (*c*) that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways (*d*).

(*a*) See the definition in Sched. V., Part I., *post*. These payments were generally charged under a local Act.

(*b*) If the application is made by the urban authority a copy of their resolution should be forwarded by the clerk with a short statement of grounds; and if by ratepayers, a petition should be prepared adhering closely to the words of the section and setting out their case in favour of the proposed change. It will be observed that no specific amount of rating is prescribed for such petitioners.

In connection with such an application the Instructions as to Provisional Orders annually issued by the Ministry (see App. II., *post*, Vol. II.) should be studied if difficulty and delay are to be avoided.

Instances of such Provisional Orders are those relating to Penryn (1907), and Barnstaple (1896).

(*c*) See s. 297, *post*, p. 629, as to the Provisional Orders of the M. of H.

(*d*) See s. 216, *post*, p. 496.

General District Rate.

District fund account.

209. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund: a separate account called "the district fund account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority (*a*); and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper (*b*).

(*a*) Though the treasurer is to keep the account of the fund, the authority should also keep a proper notice of it in their ledger.

(*b*) Note that in this matter the authority appears to have an absolute discretion, though the next section only enables a district rate to be made when the district fund is insufficient to meet the expenses. As to liability to pay income tax on any balance to the credit of the fund, see *Matthews* v. *Cork C. C.*, [1910] 2 I. R. 544; *Glamorgan Quarter Sessions* v. *Wilson*, [1910] 1 K. B. 725; 74 J. P. 299.

210. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority (*a*) shall from time to time, as the occasion may require (*aa*), make by writing under their common seal (*b*), and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates." **Section 210.** —— Making general district rate.

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate (*c*): in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded (*d*).

Public notice (*e*) of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement (*f*) of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and at least (*g*) seven days previously thereto (*h*); but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given (*i*).

(*a*) Though it is not desirable that an authority should levy rates if not duly constituted, it is nevertheless very doubtful whether the legality of the election can be tried in resisting a rate levied by them; see Sched. II., r. 70 (now repealed by the L. G. A., 1894), *post*, and *Howitt* v. *Manful* (1856), 6 El. & Bl. 736; 20 J. P. 387. In that case a local board had required justices to issue a distress warrant, and upon distraint an action of replevin was brought (as to this see *Ex parte Crumpsall L. B.* (1856), 20 J. P. 771). The point was not absolutely decided, for the court held that the board were legally constituted. It had been held that the validity of the election of members of a board of guardians could not be questioned upon a *mandamus* to enforce a contribution for the relief of the poor (*R.* v. *St. Andrew's, Holborn* (*Guardians of*) (1839), 10 A. & E. 736). Validity of rate in relation to constitution of urban authority.

(*aa*) See as to concurrent rates, *R.* v. *Fordham* (1839), 11 A. & E. 73; *R.* v. *Best* (1848), 16 L. J. M. C. 102; and *Evans* v. *Battersea Borough Council* (1908), 72 J. P. 189; and as to enforcing such a rate before justices, see *Sandgate L. B.* v. *Pledge* (1885), 14 Q. B. D. 730; 49 J. P. 342. Concurrent rate.

(*b*) These words remove a difficulty raised in *R.* v. *Worksop L. B.* (1865), 5 B. & S. 951; 28 J. P. 596. The members need not now sign the rate. Rates under seal.

The rates which can now be levied by an urban authority under this Act are the general district rate, the water rate, the highway rate, the private improvement rate, and, perhaps, in certain special cases, a burial rate. See Sched. V., Part III., *post*.

(*c*) Care must be taken not to provide in the general district rate for expenses otherwise chargeable. In *Dryden* v. *Putney* (*Overseers of*) (1876), 1 Ex. D. 223; 40 J. P. 263, the expenses of paving a footpath had been improperly charged to the general rate, and the board were afterwards ordered to restore to the general rate the sum so charged, and to levy the amount upon the owners liable. See also *Att.-Gen.* v. *Wandsworth District Board of Works* (1877), 6 Ch. D. 539. See *R.* v. *Dublin Corporation*, [1911] 2 I. R. 245, as to whether a rate intended to provide funds for (*inter alia*) an illegal purpose can be quashed on *certiorari*, or must be appealed against. In *Att.-Gen.* v. *Newcastle-upon-Tyne* (*Mayor, etc. of*), [1892] A. C. 568; 56 J. P. 836, the defendants were restrained from applying a borough rate to an illegal purpose. See also *Att.-Gen.* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516; 64 J. P. 276; *Att.-Gen.* v. *Fleetwood U. D. C.* (1908), 72 J. P. 120; *Att.-Gen.* v. *East* Rates for expenses otherwise chargeable. Rates for illegal purposes.

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Barnet Valley R. D. C. (1911), 75 J. P. 484; 9 L. G. R. 913; *Kemp* v. *Glasgow Corporation*, [1920] A. C. 836; 18 L. G. R. 377; and *Att.-Gen.* v. *De Winton*, *Att.-Gen.* v. *Tottenham U. D. C.*, and *Att.-Gen.* v. *West Ham Corporation*, on pp. 521, 522, *post*; and *cf. In re Borrisskane R. D. C.*; *Ex parte Higginbotham*, [1914] 1 Ir. R. 297.

Retrospective rates.

One general rate may be made to include both past and future expenses if the amount of each is shown in the estimate. A question was raised in *R.* v. *Worksop L. B.*, *supra*, as to the effect of insufficiently setting out the sums required in respect of each of the purposes for which the rate was made, but the court did not decide the point.

In *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; 67 J. P. 5, a decision of quarter sessions quashing a rate on the ground that it included charges incurred more than six months before the making of the rate was upheld on appeal.

The effect of the section is to legalise a retrospective payment out of the rate, provided the charges or expenses have been incurred within six months before the making of the rate. No validity is given to payments in respect of debts incurred beyond that time, except when the charges are expressly authorised by this or some previous Act. In a former edition of this work it was stated that since the decision in *Waddington* v. *City of London Union* (1858), El. B. & E. 370; 22 J. P. 755, it had probably been a good ground of appeal against a rate that it was to be applied to pay debts due beyond the limited time. It has now been decided that there is a right of appeal to quarter sessions where it appears from the estimate that payment of a debt more than six months old is to be made out of the rate (see *Smith* v. *Southampton Corporation*, *supra*). In that case a borough council in their estimate for a general district rate included items which consisted of debts contracted in former years, and which had from year to year been carried to a "suspense account," opened for that purpose, and a balance due for works executed in previous years. The council from time to time paid these old debts by money borrowed from their bank by overdrafts, but, so far as the ratepayers were concerned, the items remained unpaid so long as they appeared in the suspense account. It was held that the rate was bad on the ground that it contained charges incurred more than six months before the making of the rate. See also *Att.-Gen.* v. *De Winton*, *post*, p. 521.

As to the meaning of the term *charges*, reference should be made to *R.* v. *Rotherham L. B.* (1857), 8 El. & Bl. 906; 22 J. P. 641. It was there held that a judgment recovered against a local board was a charge; but that execution having been stayed for a period under the consent order for judgment, the six months did not begin to run until the expiration of that period, so that a rate could be levied within six months therefrom. As the judgment was not satisfied, the court issued a *mandamus* to the local board to make a rate to discharge it. See also as to a judgment being "a charge," *Croydon Corporation* v. *Croydon R. D. C.*, [1908] 1 Ch. 222; 72 J. P. 13. The judgment of NEVILLE, J., in this case was partly reversed on appeal, [1908] 2 Ch. 321; 72 J. P. 369.

In *Collen* v. *Dublin C. C.*, [1908] 1 I. R. 503, it was held that the fact that a decree of the Chancery Division rectifying a contract was necessary owing to the contract amount having by mutual mistake been put at too low a figure did not justify a departure from the provisions of such a section; nor did it matter that the debtors delayed in the expectation that the L. G. B. would intervene in the dispute.

Where certain commissioners were turned into a local board after having incurred certain liabilities which, by the order constituting the local board, were charged upon their property, it was held that the board were bound to make a rate to discharge this liability, notwithstanding the lapse of this period (*Ward* v. *Lowndes* (1859), 29 L. J. Q. B. 40; 23 J. P. 357). The ground of this decision was that the debt was not a charge incurred by the board within the meaning of the section, and that the board had power, under the order declaring the debt to be a charge on the rates, to levy a rate to defray it without limitation of time.

A plaintiff in his declaration prayed a writ of *mandamus* to compel a local board to levy a rate and pay him an amount awarded by an arbitrator as compensation for damages. The damage occurred more than six months before the application, but the award was made within six months. The board resisted the claim on the ground that the expenses for which it was sought to compel them to levy the rate

had not been incurred within the six months prescribed by the corresponding section (s. 89) of the P. H. A., 1848. It was held that the plaintiff was entitled to his writ, for the six months must be reckoned from the date of the award (*Ringland* v. *Lowndes* (1863), 15 C. B. (N.S.) 173; 33 L. J. C. P. 25). Note to Section 210.

A local board having erroneously made a special rate, B. paid his *quota* before the error was discovered. Five years afterwards he commenced an action against the board to recover the money, and obtained a judgment, and afterwards sued them on the judgment, demanding in his declaration, a *mandamus* to them to make and levy a rate for the purpose of satisfying the judgment:—*Held*, assuming the debt so contracted by the board to be a *charge*, B. was not entitled to a *mandamus* to levy a rate as the original action was not commenced within six months after the charge was incurred (*Burland* v. *Kingston-upon-Hull L. B.* (1863), 32 L. J. Q. B. 17; 27 J. P. 230). In the same case it was decided that it is no answer to an application for a *mandamus* to levy a rate in such a case that the board may possibly have funds to pay the amount required, and that a fresh rate may not be necessary.

For an instance of the claim of a *mandamus* being inapplicable, see *Bush* v. *Beavan*, *ante*, p. 451. In an Irish case, *R.* v. *Tramore Drainage Board* (1892), 30 L. R. Ir. 329, a contractor who had obtained judgment against a drainage board for extra works executed by him under agreement with the board, but not specified in the final award, applied for a *mandamus* to compel the board to levy a rate to satisfy the judgment, but it was held that the *mandamus* should be refused as rates were leviable by the board for the maintenance of works only and not for their construction, which was otherwise provided for.

Where a judgment was recovered against a local board in an action commenced after the expiration of six months from the accrual of the right of action, and a *mandamus* was sued out within six months to enforce the judgment, the court held that a peremptory writ might be granted if sufficient cause were shown to excuse the delay in commencing the action (*Worthington* v. *Hulton* (1865), L. R. 1 Q. B. 63; 30 J. P. 22). Referring to this case, and to *R.* v. *Rotherham L. B.*, *ante*, p. 474, Lord Blackburn, in *Julius* v. *Bishop of Oxford* (1880), 5 App. Cas., at p. 243, said: "Though giving a power is primâ facie merely enabling the donee to act, and so may not inaccurately be said to be equivalent to saying he may act, yet if the object of giving the power is to enable the donee to effectuate a right, then it is the duty of the donee of the power to exercise the power when those who have the right call upon him to do so. . . . Thus, in 11 & 12 Vict. c. 63, s. 89, the words are, 'The local board *may* make rates prospectively,' etc.; yet on the application of a judgment creditor a *mandamus* will go to compel the making of a rate for the purpose of satisfying a judgment within six months after the judgment has been obtained." See also *Wolstanton United U. D. C.* v. *Tunstall U. D. C.*, [1910] 2 Ch. 347; 74 J. P. 353; [1911] 1 Ch. 229; 75 J. P. 203.

In *Swire* v. *Burley L. B.* (1859), 33 L. T. (o.s.) 222, a rule for a *mandamus* to levy a rate for the payment of a debt was made absolute when the work, payment for which was claimed, was done in 1857, but the judgment was not obtained until 1859, Erle, J., remarking that there had been no wilful delay, but the judgment had been delayed by misfortune. In this case, however, the writ had been issued within six months from the completion of the work.

But where, through the delay of the plaintiffs it was necessary for the defendants, a local board, to have the authority of a *mandamus* to justify them in paying a sum of money, the court refused to make a rule absolute calling on them to pay the costs of the *mandamus* (*R.* v. *Burleigh L. B.* (1859), 1 L. T. 92). Blackburn, J., said: "In this case judgment was not signed until two years after the verdict; and that circumstance alone was sufficient to render it desirable that the local board should be justified in making the payment by the authority of a *mandamus*. There has been a delay of two years, and a great part of that time has not been satisfactorily accounted for."

A corporate body having raised money under statutory powers by debentures issued some of their debentures to one of their own body in payment of goods supplied by him, such a transaction being illegal under the statute by which they were constituted:—*Held*, in an action by the executors of an innocent holder for value of such securities, that the defendants were estopped from setting up as a

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defence the original illegality of the transaction, and that under the Common Law Procedure Act, 1854, s. 68, the writ was in the proper form in praying for a *mandamus* to compel them to apply the money in their hands raised under the powers of the statute and applicable to that purpose, and that it was not necessary that the *mandamus* should direct the defendants to levy a rate for the purpose of satisfying the plaintiffs' demand (*Webb* v. *Herne Bay Commissioners* (1870), L. R. 5 Q. B. 642 ; 34 J. P. 629).

At the time when the parish of B. was by a Provisional Order separated from the local government district of M., the special district rates of that district were mortgaged for the unexpired period of twenty-three years to secure the repayment of a debt which had previously been incurred by the local board of the district of M. The statute 24 & 25 Vict. c. 39, which confirmed the Provisional Order, apportioned the amount which the parish of B. should contribute towards the payment of such debt, and provided that the overseers of that parish should raise the annual instalments required to pay off the sum the parish of B. was to contribute in the name and as part of the rates levied within such parish for the relief of the poor. In July, 1883, the local board paid off the last instalment of principal and interest due under the mortgage, and on March 25th, 1884, demanded from the overseers of the parish of B. payment of the amount due from the parish since January 13th, 1879, up to which date the parish had duly contributed in accordance with the 24 & 25 Vict. c. 39. The demand not having been complied with, application was made for a *mandamus* to compel the overseers to levy a rate in order to pay the amount in arrear. It was held that the obligation imposed by the statute on the parish of B. was that they should pay their proportion of the debt annually, and that the effect of the granting of the *mandamus* would be to enforce the levy of retrospective rates ; and the court therefore discharged the rule (*R.* v. *Bedlington Overseers* (1884), 48 J. P. 486).

The writ of *mandamus*, being a prerogative writ, is not a writ of right. The granting of it is, therefore, discretionary (*R.* v. *All Saints'*, *Wigan* (1876), 1 App. Cas. 611 ; 41 J. P. 132). The application for it must be made to the King's Bench Division (*per* BRETT, L.J., in *Glossop* v. *Heston and Isleworth L. B.*, *ante*, p. 67). The granting of a *mandamus* in an action is also discretionary. See *Croydon Corporation* v. *Croydon R. D. C.*, *infra*.

The defendants, a rural district council, in 1895, incurred a debt to an urban district council in respect of water supply for a contributory place within their district. The defendants refused to pay the debt, setting up a cross-claim against the urban district council for damages, for breach of agreement, to a greater amount. In respect of these conflicting claims a prolonged correspondence and negotiation took place between the two councils ; but ultimately the urban district council brought an action for their debt in March, 1897, and on May 15th, 1897, the amount actually payable to them was ascertained by judgment being recovered by them for a balance of their debt over and above the sum recovered by the defendants on their counterclaim. On October 25th in the same year, the urban district council applied for a *mandamus* commanding the defendants to issue their precept to the overseers of the contributory place for payment of the amount recovered. And it was held that the delay in the commencement of the action being under the circumstances excusable, the *mandamus* ought to issue, and that the rate which would thereupon have to be made would not be illegal as being retrospective (*R.* v. *Leigh R. D. C.*, [1898] 1 Q. B. 836 ; 62 J. P. 355).

By certain agreements entered into between the plaintiffs and the defendants, the drainage area of certain parishes in the defendants' district was extended and connected with the general drainage system of the plaintiffs, and it was by such agreements provided that the defendants should pay to the plaintiffs as yearly rent an amount calculated on the rateable value of all the property within such parishes liable to contribute to the rates for special expenses under the Sanitary Acts. As the result of a mutual mistake the defendants only paid to the plaintiffs the amount calculated on the houses in such parishes actually connected with and draining into the plaintiffs' general drainage system. In an action claiming judgment for the amount of the difference and for a *mandamus* to issue precepts for the levying of rates sufficient to cover the same, it was held that the debt being ascertainable at the time when it originally became payable, though it was not properly ascertained

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through a mistake common to both parties, there must be judgment for the amount claimed, and, further, that the effect of *R.* v. *Leigh R. D. C.*, *supra*, being to give the court a discretion as to granting a *mandamus* to levy a retrospective rate, no relief should be granted to the plaintiffs by way of *mandamus* to issue precepts for the levying of rates to satisfy the amount of the claim, as the effect of the *mandamus* would be to throw on one set of ratepayers a burden which should have been borne by another set of ratepayers (*Croydon Corporation* v. *Croydon R. D. C.*, [1908] 1 Ch. 222; 72 J. P. 13). On appeal the court granted a *mandamus* as to such portion of the plaintiff's claim as accrued due in the year 1904–5, because a demand for the right sum had been made during the course of that year, and it might have been complied with during the year, and negotiations were entered into with respect thereto, and continued until the action was commenced. As to the remainder of the claim, *i.e.*, the amount which accrued due during 1903–4, the court held that they would not be justified in throwing upon present ratepayers arrears which were not demanded until April, 1905 ([1908] 2 Ch. 321; 72 J. P. 369). See also *Belfast Guardians* v. *Belfast Corporation*, [1912] 1 I. R. 104, as to a claim two years old arising out of an arithmetical error in an apportionment and precepts.

This section appears to afford no defence to an action for a debt more than six months old, for the plaintiff may be able to enforce any judgment that he may obtain by the ordinary process of execution without asking for a *mandamus* to levy a rate (*South Metropolitan Gas Co.* v. *Mayor, etc. of Bermondsey* (1901), 17 T. L. R. 520).

It was pointed out in *R.* v. *Wicklow C. C.*, [1908] 2 I. R. 101, that want of ability to comply with a *mandamus* is a good answer to an application for such a writ, and also that funds specifically dedicated to particular purposes cannot by means of a judgment be made applicable to other purposes.

It is to be observed that this section applies only to urban authorities.

As to when, apart from any express statutory provision such as that in the text, a rate is bad as being retrospective, see *Harrison* v. *Stickney* (1848), 2 H. L. Cas. 108; *Jones* v. *Johnson* (1850), 5 Ex. 862; 15 J. P. 21; *Woods* v. *Reed* (1837), 2 M. & W. 777: *R.* v. *Maidenhead* (*Mayor, etc. of*) (1882), 9 Q. B. D. 494; 46 J. P. 724; *Jersey* (*Earl of*) v. *Uxbridge R. S. A.*, [1891] 3 Ch. 183; *Caistor Union* v. *North Kelsey* (*Overseers of*) (1890), 59 L. J. M. C. 102; 62 L. T. 731; *Easton* v. *Nar Valley Drainage Commissioners* (1892), 8 T. L. R. 649; *R.* v. *Wexford Corporation* (1887), 18 L. R. Ir. 119, 129; *R.* v. *Leigh R. D. C.*, *ante*, p. 476, and *Croydon Corporation* v. *Croydon R. D. C.*, *supra*. Such an objection, if not raised by appeal against the rate, cannot be taken in proceedings to enforce payment (*R.* v. *Streetfield* (1863), 27 J. P. 391; 11 W. R. 736; *R.* v. *Kingston* (1858), El. B. & E. 256; *Cheney* v. *Tallowin*, [1904] 2 K. B. 763; 68 J. P. 528).

(*d*) This provision was introduced into 21 & 22 Vict. c. 98, s. 54, because the law officers of the Crown had advised, in 1854, that if a rate were quashed on appeal, the six months' period was not extended, and that any rate of a retrospective character would still be limited to that period independently of its date. But it is not easy to see how the clause is to be worked out. It appears to depend upon a result not ascertained at the time when the rate is made. It is impossible to declare that subsequent events can render an absolute act which was legally valid when done, such as the making of the rate, invalid at the time of its being made. But the delay caused by the appeal, and litigation arising out of it, may affect the legality of payments out of the rate. Time of appeal excluded.

(*e*) There is no precise direction as to how this notice is to be published, but it will be best to follow the course adopted with regard to all notices of a public nature required to be given by the authority. Notice of rate.

(*f*) It is by no means clear what is meant by this statement; probably it is the draft of the proposed rate, which, being open to inspection, may be corrected, if erroneous, before it is sealed. Statement for inspection.

(*g*) These words mean that both days are to be exclusive (*R.* v. *Shropshire JJ.* (1838), 8 A. & E. 173; 7 L. J. M. C. 56; *Young* v. *Higgon* (1840), 6 M. & W. 49; 9 L. J. M. C. 29). "At least."

(*h*) It is not apparent for what object this notice is to be given, as no ratepayer

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can interfere to prevent the rate from being made, unless, indeed, the matter be of sufficient importance to justify an application for an injunction.

Object of notice.

(*i*) But if it be shown that the notice was *not* given, the question will arise whether this notice is a necessary condition precedent, or whether this provision is directory only. It will be seen hereafter (s. 222, *post*, p. 505) that the publication of the rate is not a condition precedent, and there are no words of avoidance in the text in case the notice is not given.

Effect of no notice.

Assessment, etc. of general district rate.

211. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect (*a*); (namely,)

(1) General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable (*b*) to any rate for the relief of the poor, and shall be assessed on the full net annual value (*c*) of such property, ascertained by the valuation list (*d*) for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions regulations and conditions; (namely,)

(a) The owner (*e*), instead of the occupier, may at the option of the urban authority be rated in cases—

Where the rateable value (*f*) of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

Where any premises so liable are let to weekly or monthly tenants; or

Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly (*g*):

Provided that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements (*h*) whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers (*i*):

(b) The owner of any tithes, or of any tithe commutation rent-charge (*k*), or the occupier of any land used as arable meadow or pasture ground only (*l*), or as woodlands (*m*) market gardens or nursery grounds (*n*), and the occupier of any land covered with water (*o*), or used only as a canal or towing-path for the same (*p*), or as a railway (*q*) constructed under the powers of any Act of Parliament (*r*) for public

conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof :

(c) If within any urban district or part of such district any kind of property is exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property (*s*) shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any general district rates under this Act unless the Local Government Board by Provisional Order otherwise direct (*t*).

(2) If at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied (*u*), such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied ; and if any such premises are afterwards occupied during any part of the period (*v*) for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected recovered and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made :

(3) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier (*w*) ; and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable :

(4) The urban authority may (*x*) divide their district or any street (*y*) therein into parts (*z*) for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed ; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act : Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them in a fair and equitable manner (*aa*),

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General scheme of section.

(*a*) In *South Wales Rail. Co.* v. *Swansea L. B.*, *post*, p. 487, ERLE, J., commenting upon the corresponding provisions of the P. H. A., 1848, s. 88, said: "The general scheme of the enactment is that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at a lower rate, and the class of property most benefited is that which is occupied immediately for the purpose of residence and the kinds of property not so occupied are not to be rated so highly." See also *Tottenham U. D. C.* v. *Metropolitan Electric Tramways, Ltd.*, [1913] A. C. 702; 77 J. P. 413, *per* Lord MOULTON.

The Agricultural Rates Act, 1896, by s. 1 (a), does not apply to any rate which the occupier of agricultural land is liable, as compared with the occupier of buildings or other hereditaments, to be assessed to or to pay in the proportion of one-half or less than one-half; and s. 9 defines the expression "agricultural land."

One local authority cannot agree with another to levy an assessment within its own district in a manner other than that prescribed by the Act which empowers it to make the assessment (*Wordie* v. *Lanarkshire C. C.* (1895), 23 R. 168).

Discount for prompt payment of rate.

The L. G. B. expressed the opinion that an allowance by an urban district council of a discount, in cases where prompt payment of a general district rate is made by a ratepayer, would be contrary to the provisions of s. 211.

Exemptions from assessment.

(*b*) Reference must be made to text books on the law of rating (*e.g.*, Ryde on Rating) in order to determine what properties are by law assessable to the poor rate. The principal exemptions from rating are Crown property, such as Royal Palaces, the Houses of Parliament; Government offices, such as the Post Office, the Horse Guards, and the Admiralty, *Leith Harbour* (*Commissioners of*) v. *The Inspector of the Poor* (1866), L. R. 1 H. L. Sc. 17; local post offices, *Smith* v. *Birmingham* (*Guardians of*) (1857), 7 El. & Bl. 483; 26 L. J. M. C. 105; Government telegraphs (see Telegraphs Act, 1868, s 22); bridges in the occupation of the Commissioners of works, *R.* v. *McCann* (1868), L. R. 3 Q. B. 141; 32 J. P. 579; barracks, *Lord Amherst* v. *Lord Sommers* (1788), 2 T. R. 372; military and naval storehouses *R.* v. *Stewart* (1855), 8 E. & B. 360; lighthouses and property belonging to or occupied by the general lighthouse authorities or the Board of Trade (57 & 58 Vict. c. 60, s. 731); prisons, *Gambier* v. *Lydford* (*Overseers of*) (1854), 3 El. & Bl. 346; 18 J. P. 456; county buildings, such as courts of assize and quarter sessions, judges' lodgings, police stations, etc., *R.* v. *St. Martin's, Leicester* (1867), L. R. 2 Q. B. 493; 31 J. P. 613; *Coomber* v. *Berkshire JJ.* (1883), 9 App. Cas. 61; 48 J. P. 421; *Showers* v. *Chelmsford Union*, [1891] 1 Q. B. 339; 55 J. P. 8; *Leicester C. C.* v. *Leicester Union Assessment Committee* (1898), 78 L. T. 463; 46 W. R. 585; *Cross* v. *West Derby Union Assessment Committee* (1899), 64 J. P. 182; 81 L. T. 645; *Monmouth Overseers* v. *Monmouthshire C. C.* (1902), 66 J. P. 788; 87 L. T. 64, in which case it was on the facts held that the premises in question were not exempt from poor rates as being used for police purposes; county council offices, *Middlesex C. C.* v. *St. George's Union Assessment Committee*, [1897] 1 Q. B. 64; 61 J. P. 38; *Worcestershire C. C.* v. *Worcester Union Assessment Committee* (1897), 61 J. P. 244, affirming [1897] 1 Q. B. 480; *Hodgson* v. *Carlisle L. B.* (1857), 8 El. & Bl. 116; 21 J. P. 421; *Nicholson* v. *Holborn Union* (1886), 18 Q. B. D. 161; 51 J. P. 341; *Macharg* v. *Stoke-upon-Trent Asssesment Committee* (1884), 48 J. P 775; *Surveyor of Taxes* v. *Smith* (1901), 4 F. 31; quarters of non-commissioned officers of the territorial force, *Wixon* v. *Thomas*, [1912] 1 K. B. 690; 76 J. P. 153; and *cf. Dellar Bros., Ltd. and Territorial Force Association* v. *Drury*, [1912] 2 K. B. 209; 76 J. P. 239; and as to drill halls and storehouses of the old militia and volunteer forces, see 17 & 18 Vict. c. 105, s. 2; 26 & 27 Vict. c. 65, s. 26; *R.* v. *Fuller* (1855), 8 E. & B. 365 n.; *R.* v. *Jay* (1857), 8 E. & B. 469; *Pearson* v. *Holborn Union*, [1893] 1 Q. B. 389; 57 J. P. 169; *St. Margaret's and St. John's Vestry* v. *Hoskins*, [1899] 2 Q. B. 474; 63 J. P. 725; *Rayner* v. *Drewitt* (1900), 64 J. P. 567; 82 L. T. 718; *Hornsey U. D. C.* v. *Hennell*, [1902] 2 K. B. 73; 66 J. P. 613; *Lewis* v. *Durham Union Assessment Committee* (1904), 68 J. P. 220; 90 L. T. 383. There are also exemptions by virtue of statutes, *e.g.*, personal property under 3 & 4 Vict. c. 89, an Act which is renewed annually; turnpike tolls, under 3 Geo. 4 c. 126, s. 51, and 4 Geo. 4, c. 95, s. 31; churches and places of religious worship under 3 & 4 Will. 4, c. 30; Sunday and ragged schools, under 32 & 33 Vict. c. 40 (see *Bell* v. *Crane* (1873), L. R. 8 Q. B. 481; 37 J. P. 711); voluntary schools under

60 & 61 Vict. c. 5, s. 3 (see hereon *Royal Commissioners of the Patriotic Fund* v. *Mayor, etc. of Wandsworth* (1903), 67 J. P. 311 ; 88 L. T. 865) ; properties occupied by societies instituted for purposes of science, literature or the fine arts exclusively, under 6 & 7 Vict. c. 36 (see *Savoy* (*Overseers of*) v. *Art Union of London*, [1896] A. C. 296 ; 60 J. P. 660 ; *Royal Agricultural Society* v. *St. George's, Hanover Square* (1895), 39 Sol. J. 557 ; *Royal College of Music* v. *Westminster Vestry*, [1898] 1 Q. B. 809 ; 62 J. P. 357 ; *Jenner Institute* v. *St. George's, Hanover Square* (1900), 69 L. J. Q. B. 814 ; 83 L. T. 344. See also *Liverpool Corporation* v. *West Derby Union* (1905), 69 J. P. 277 ; 92 L. T. 467, where it was held that a free library owned and occupied by a municipal corporation was not exempt from being rated, either on the ground that there was no beneficial occupation, or that it was land owned by a society for the purposes of science, literature or the fine arts under the above-mentioned Act ; and *Hornsey School of Art* v. *Edmonton Union* (1905), 70 J. P. 121 ; 94 L. T. 203, where it was held that an institution was in part supported by "voluntary contributions" within the meaning of the same Act—the expenses of the institution were defrayed by the fees of the students and grants by the Board of Education and the county council of Middlesex) ; land on Thames Embankment, under 7 Geo. 3, c. xxxvii (see *Sion College* v. *Lord Mayor, etc. of London*, [1901] 1 Q. B. 617 ; 65 J. P. 324 ; *Associated Newspapers, Ltd.* v. *London Corporation* (No. 1), [1914] 2 K. B. 603 ; affirmed, [1915] A. C. 674 ; 79 J. P. 273, and (No. 2), [1916] 2 A. C. 429 ; 80 J. P. 393 ; a ferry under 30 Geo. 3, c. lxi (see *Pole-Carew and St. Levan* (*Lord*) v. *Craddock*, [1920] 3 K. B. 109 ; 89 L. J. K. B. 507) ; a public charitable institution under s. 168 of the Towns Improvement Clauses Act, 1847 (see *Shaw* v. *Halifax Corporation*, [1915] 2 K. B. 170 ; 79 J. P. 257). **Note to Section 211.**

See also as to other local Acts creating exemptions, *Netherlands Steamboat Co.* v. *London Corporation*, [1906] A. C. 263 ; 69 J. P. 443 ; *Jonas* v. *Churchwardens and Overseers of St. Dunstan-in-the-West* (1908), 72 J. P. 157 ; *Bank of England* v. *London Corporation* (1915), 13 L. G. R. 1369 ; 85 L. J. K. B. 47. As to lands vested in the Thames Conservators under 57 & 58 Vict. c. clxxxvii, s. 289, see *Thames Conservators* v. *City of London Union Assessment Committee* (1897), 13 T. L. R. 157 ; 41 Sol. J. 142, and *Whenman* v. *Clark*, [1916] 1 K. B. 94 ; 80 J. P. 128. Reference might also be made to *Whitehaven Harbour Commissioners* v. *Whitehaven Union* (1905), 70 J. P. 89 ; 4 L. G. R. 128. As to the partial exemption from county, parochial or other local rates of burial grounds provided under the Burial Acts, 1852 to 1885, see 18 & 19 Vict. c. 128, s. 15. As to the privilege of an ambassador and his suite from payment of rates, see *Parkinson* v. *Potter* (1885), 16 Q. B. D. 152 ; 50 J. P. 470 ; *Macartney* v. *Garbutt* (1890), 24 Q. B. D. 368 ; 54 J. P. 437.

It is not now a ground of exemption from rating that the property is occupied for public purposes (*Mersey Docks and Harbour Board Trustees* v. *Cameron* (1865), 11 H. L. Cas. 443).

Unoccupied property cannot be rated (*Smith* v. *New Forest Union* (1889), 54 J. P. 324 ; 61 L. T. 870 ; *New Ross Union* v. *Byrne* (1892), 30 L. R. Ir. 160). Upon similar words in a local Act, it was held that the *owner* of unoccupied and unfurnished premises was not rateable (*Sligo* (*Corporation of*) v. *Wynne* (1873), 7 Ir. R. C. L. 465). Unoccupied property.

As to what amounts to occupation, see *Southend-on-Sea* (*Mayor, etc. of*) v. *White* (1900), 65 J. P. 7 ; 83 L. T. 408 ; *Bootle Overseers* v. *Liverpool Warehousing Co.* (1901), 65 J. P. 740 ; 85 L. T. 45 ; *Gage* v. *Wren* (1902), 67 J. P. 32 ; 87 L. T. 271 ; *R.* v. *Melladew & Son*, [1907] 1 K. B. 192 ; 71 J. P. 125 ; *Borwick* v. *Southwark Borough Council*, [1909] 1 K. B. 78 ; 73 J. P. 38 ; *Shepherd's Bush Improvements, Ltd.* v. *Hammersmith Borough Council* (1910), 74 J. P. 280 ; 102 L. T. 819 ; *Young & Co.* v. *Liverpool Assessment Committee*, [1911] 2 K. B. 195 ; 75 J. P. 233 ; *Edinburgh Parish Council* v. *Schulze* (1916–17), 54 S. L. R. 577 ; *Curzon* v. *Westminster Corporation* (1916), 80 J. P. 468 ; 14 L. G. R. 1112. "Occupation."

As to occupation of part of premises which are let as a whole, see *Langford* v. *Cole* (1910), 74 J. P. 229 ; 102 L. T. 808. And as to the rating of houses occupied only by caretakers, see *Yates* v. *Overseers of Chorlton-upon-Medlock* (1883), 47 J. P. 630 ; 48 L. T. 872 ; *Hicks* v. *Overseers of Dunstable* (1883), 48 J. P. 326 ; *Bursledon Overseers* v. *Clarke* (1897), 61 J. P. 261 ; *Bertie* v. *Walthamstow Overseers* (1904), 68 J. P. 545. Guardians were held to be in rateable occupation of a workhouse under similar words in 21 & 22 Vict. c. 98, s. 55 (*Toxteth Park* (*Guardians of*) v. *Toxteth Park L. B.* (1861), 1 B. & S. 167 ; 25 J. P. 645).

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Some recent decisions on the rating of various kinds of property may here be mentioned. As to property purchased by the Postmaster-General under the Telegraph Acts, see *St. Gabriel, Fenchurch* (*Overseers of*) v. *Williams* (1885), 16 Q. B. D. 649; 50 J. P. 533; telegraph and telephone wires, see *Paris and New York Telegraph Co.* v. *Penzance Union* (1884), 12 Q. B. D. 552; 48 J. P. 693; *Lancashire, etc. Telephone Exchange Co.* v. *Manchester* (*Overseers of*) (1884), 14 Q. B. D. 267; 49 J. P. 724; "provided" schools, see *R.* v. *West Bromwich School Board* (1884), 13 Q B. D. 929; 48 J. P. 808; *R.* v. *London School Board* (1886), 50 J. P. 419; 34 W. R. 583; *Owens College* v. *Overseers of Chorlton-upon-Medlock* (1887), 18 Q. B. D. 403; 51 J. P. 356; coal mines, *Denaby and Cadeby Colliery Co.* v. *Doncaster Union* (1898), 62 J. P. 343; 78 L. T. 388; *Brown* v. *Rotherham Union* (1900), 64 J. P. 580; 83 L. T. 193; *Davis & Sons, Ltd.* v. *Pontypridd Union* (1916), 80 J. P. 377; 14 L. G. R. 932; gravel pits, *Farnham Flint Co.* v. *Farnham Union*, [1901] 1 Q. B. 272; 64 J. P. 390; licensed premises, *White* v. *Bradford-on-Avon Assessment Committee*, [1898] 2 Q. B. 830; 62 J. P. 533; *Camberwell Assessment Committee* v. *Ellis*, [1900] A. C. 510; *Cartwright* v. *Sculcoates Union*, [1900] A. C. 150; 64 J. P. 229; *Waddle* v. *Sunderland Union Assessment Committee*, [1908] 1 K. B. 642; 72 J. P. 99; *R.* v. *Shoreditch Assessment Committee*, [1910] 2 K. B. 859; 74 J. P. 361; *Poplar Assessment Committee* v. *Roberts* (1922), 38 T. L. R. 499; payments in lieu of tithes, see *R.* v. *Christopherson* (1885), 16 Q. B. D. 7; 50 J. P. 212; *Esdaile* v. *London* (*City of*) *Assessment Committee* (1887), 19 Q. B. D. 431; 51 J. P. 564; *Edwards* v. *St. Olave's Union* (1892), 8 T. L. R. 647; *St. Asaph* (*Dean and Chapter of*) v. *Overseers of Llanrhaiadr-y-Mochnant*, [1897] 1 Q. B. 511; 61 J. P. 213; machinery, see *Tyne Boiler Works Co.* v. *Tynemouth* (*Guardians of*) (1886), 18 Q. B. D. 81; 51 J. P. 420; *Giffard* v. *Chard Union* (1890), 63 L. T. 249, affirmed (1890), 6 T. L. R. 431; *Hoyle* v. *Oldham Union*, [1894] 2 Q. B. 372; 58 J. P. 669; *Midleton Union* v. *McDonnell*, [1896] 2 I. R. 228; *Crockett* v. *Northampton Union* (1902), 18 T. L. R. 451; *Kirby* v. *Hunslet Union*, [1906] A. C. 43; 70 J. P. 50; *Smith & Sons* v. *Willesden Union Assessment Committee* (1919), 83 J. P. 233; 17 L. G. R. 492; railway let at a fixed rent, see *Altrincham Union* v. *Cheshire Lines Committee* (1885), 15 Q. B. D. 597; 50 J. P. 85; *North and South Western Rail. Co.* v. *Brentford Union* (1888), 13 App. Cas. 592; *M. S. & L. Rail. Co.* v. *Doncaster Union* (1894), 57 J. P. 792; 69 L. T. 350; *L. & N. W. Rail. Co.* v. *Ampthill Union* (1905), 70 J. P. 46; 94 L. T. 314; line connecting two railway systems, see *G. C. Rail. Co.* v. *Banbury Union Assessment Committee* and *G. C. Rail. Co.* v. *Sheffield Union*, [1909] A. C. 78; 73 J. P. 59, 62; *East London Railway Joint Committee* v. *Greenwich Union* (No. 1) (1907), 71 J. P. 460; (No. 2), [1913] 1 K. B. 612; 77 J. P. 153; *G. W. & Met. Rail. Cos.* v. *Hammersmith Union* (1914), 78 J. P. 59; 110 L. T. 96; railway station, see *N. E. Rail. Co.* v. *York Union*, [1900] 1 Q. B. 733; 64 J. P. 347; *Barwick* v. *S. E. & C. Rail. Co.*, [1921] 1 K. B. 187; 85 J. P. 65; signal box, see *Midland Rail. Co.* v. *Pontefract Union*, [1901] 2 K. B. 189; 65 J. P. 455; duplicated or multiplied lines, *Stockport Union* v. *L. & N. W. Rail. Co.* (1898), 67 L. J. Q. B. 335; 62 J. P. 244; *In re G. N. Rail. Co. and Edmonton Union* (1905), 69 J. P. 179, 316; 93 L. T. 479; *In re Taff Vale Rail. Co. and Cardiff Union Assessment Committee* (1907), 71 J. P. 529; miscellaneous points of railway rating, *L. & N. W. Rail. Co.* v. *Thrapston Union* (1912), 77 J. P. 25; 29 T. L. R. 21; *G. E. Rail. Co.* v. *Bishop's Stortford Union* (1911), 75 J. P. 61; contractor's railway, *Nott* v. *Cardiff Corporation*, [1918] 2 K. B. 146; 82 J. P. 181; reformatory school, see *Tunnicliffe* v. *Birkdale* (*Overseers of*) (1888), 20 Q. B. D. 450; 52 J. P. 452; industrial school, see *Durham C. C.* v. *Chester-le-Street Assessment Committee*, [1891] 1 Q. B. 330; 54 J. P. 759; sewage farms and pumping stations, see *Burton-on-Trent* (*Mayor, etc. of*) v. *Egginton* (*Churchwardens of*) (1889), 24 Q. B. D. 197; 54 J. P. 453; *London C. C.* v. *Erith Churchwardens*, [1893] A. C. 562; 57 J. P. 821; *Leicester Corporation* v. *Beaumont Leys Churchwardens* (1894), 63 L. J. M. C. 176; *Stourbridge Main Drainage Board* v. *Seisdon Union* (1902), 66 J. P. 372; 86 L. T. 415; *Davies* v. *Seisdon Union*, [1908] A. C. 315; 72 J. P. 305; *Hall* v. *Seisdon Union* (1913), 77 J. P. 17; sewers, *Ystradyfodwg Sewerage Board* v. *Newport Union Assessment Committee*, [1901] 1 Q. B. 406; 65 J. P. 307; *West Kent Main Sewerage Board* v. *Dartford Union Assessment Committee*, [1911] A. C. 171; 75 J. P. 305; *Darenth Valley Main Sewerage Board* v. *Dartford Union Assessment Committee* (1910), 74 J. P. 129; *Water of Leith Commissioners* v. *Leith Assessor* (1913), 51 Sc. L. R. 177; docks, see *Sculcoates Union* v. *Hull Docks Co.*,

Decisions as to assessment:—

Telegraphs.

"Provided" schools.

Coal mines.

Gravel pits.

Licensed houses.

Tithe rent-charges.

Machinery.

Railways, etc.

Reformatories, etc.

Sewage farms.

Docks, etc.

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[1895] A. C. 136; 59 J. P. 612; *London and India Docks* v. *Poplar Union* (1900), 64 J. P. 820; 83 L. T. 371; lairages, *Mersey Docks and Harbour Board* v. *Birkenhead Union*, [1901] A. C. 175; 65 J. P. 579; *Mersey Docks and Harbour Board* v. *Birkenhead Corporation*, [1916] 1 K. B. 695; 80 J. P. 217; *Port of London Authority* v. *Orsett Union*, [1920] A. C. 273; 84 J. P. 69; harbour tolls and dues, see *Sutton Harbour Improvement Co.* v. *Plymouth Guardians* (1890), 63 L. T. 772; *Blyth Harbour Commissioners* v. *Newsham and South Blyth Churchwardens*, [1894] 2 Q. B. 675; 59 J. P. 4; *Swansea Harbour Trustees* v. *Swansea Union* (1907), 71 J. P. 497; 5 L. G. R. 1240; *Great Yarmouth Port Commissioners* v. *Great Yarmouth Union* (1915), 79 J. P. N. 305; lighthouses, *Lancaster Port Commissioners* v. *Overseers of Barrow-in-Furness*, [1897] 1 Q. B. 166; 61 J. P. 21; pontoons and moorings, *M. S. & L. Rail. Co.* v. *Kingston-upon-Hull Governors* (1896), 60 J. P. 789; 12 T. L. R. 539; *Tyne Pontoons Co.* v. *Tynemouth Union* (1897), 76 L. T. 782; *White Bros.* v. *South Stoneham Union*, [1915] 1 K. B. 103; 79 J. P. 79; gasworks, see *Edinburgh Gas Light Co.* v. *Assessor for Leith* (1887), 14 Ct. of Sess. Cas. 583; *Kinross Gas Light Co.* v. *Assessor for Kinross* (1890), 17 Ct. of Sess. Cas. 850; gas mains and pipes, *Southport (Mayor, etc. of)* v. *Ormskirk Assessment Committee*, [1894] 1 Q. B. 196; 58 J. P. 212; a drainage tunnel and watercourse, *Holywell Union* v. *Halkyn District Mines Drainage Co.*, [1895] A. C. 117; 59 J. P. 566; foreshore, *Margate Corporation* v. *Pettman* (1912), 76 J. P. 145; 106 L. T. 104; public parks, cases on p. 373, *ante*; museum, *Soane Museum* v. *St. Giles-in-the-Fields (Vestry of)* (1900), 83 L. T. 248; 16 T. L. R. 440; advertising stations, see 52 & 53 Vict. c. 27, and *Chappell* v. *St. Botolph (Overseers of)*, [1892] 1 Q. B. 561; 56 J. P. 310; *Shelley* v. *Dillon* (1892), 30 L. R. Ir. 304; *Burton* v. *St. Giles' and St. George's Union Assessment Committee*, [1900] 1 Q. B. 389; 64 J. P. 213; *Lewisham Corporation* v. *Avey* (1912), 76 J. P. 343; 10 L. G. R. 553; *Wilson & Co., Ltd.* v. *Kincardineshire Assessor*, [1913] S. C. 704; waterworks and reservoirs, see the cases cited *post*, p. 486, and *ante*, p. 122; tramway undertaking, *Melbourne Tramway and Omnibus Co.* v. *Fitzroy (Corporation of)*, [1901] A. C. 153; tramway undertaking extending over several parishes, *London United Tramways, Ltd.* v. *Brentford Union Assessment Committee* (1907), 71 J. P. 249; 96 L. T. 528; tenements separately occupied though forming part of one building, *Allchurch* v. *Hendon Union*, [1891] 2 Q. B. 436; 56 J. P. 117; *Curzon* v. *Westminster Corporation* (1916), 80 J. P. 468; 14 L. G. R. 1112; public toll bridge, *Percy* v. *Hall* (1903), 67 J. P. 293; 88 L. T. 830; cemeteries, *R.* v. *St. Mary Abbott's, Kensington* (1841), 10 L. J. M. C. 215; *R.* v. *Abney Park Cemetery Co.* (1874), L. R. 8 Q. B. 515; *Edinburgh Parish Council* v. *Edinburgh Magistrates*, [1912] S. C. 793 (as to the position of burial grounds and churchyards, see 18 & 19 Vict. c. 128, s. 15; *Winstanley* v. *North Manchester Overseers*, [1910] A. C. 7; 74 J. P. 49); market tolls, *R.* v. *Bell* (1816), 5 M. & S. 221; *Colebrook* v. *Tickell* (1836), 5 L. J. K. B. 180; 4 A. & E. 916; *Roberts* v. *Aylesbury Overseers* (1853), 1 El. & Bl. 423; 22 L. J. M. C. 34; *Percy* v. *Ashford Union* (1876), 34 L. T. 579; *R.* v. *Casswell* (1872), L. R. 7 Q. B. 328; 36 J. P. 645; *R.* v. *Bedford (Duke of)* (1881), 45 L. T. 616; *London (Mayor, etc. of)* v. *Greenwich Union Assessment Committee* (1883), 47 J. P. 420; 48 L. T. 437; *Williams* v. *West Bromwich (Overseers of)* (1890), 54 J. P. 389; *Horner* v. *Stepney Union* (1908), 72 J. P. 262; 98 L. T. 450; movable buildings for housing contractor's workmen, *Mitchell Brothers* v. *Worksop Union* (1904), 69 J. P. 53; 92 L. T. 62; canals and inland navigations, *Doncaster Assessment Committee* v. *M. S. & L. Rail. Co.* (1894), 71 L. T. 585; *Glamorganshire Canal Co.* v. *Merthyr Tydfil Assessment Committee* (1902), 67 J. P. 52; 88 L. T. 85; *Leeds & Liverpool Canal* v. *Wigan Union* (1913), 11 L. G. R. 634.

Lighthouses. Pontoons. Gasworks, etc. Public parks, etc. Advertising stations. Waterworks. Tramways. Building occupied in separate tenements. Public toll bridge. Cemeteries and burial grounds. Market tolls. Contractor's huts. Canals.

(*c*) See the definition of full net annual value in s. 4, *ante*, p. 15.

Annual value.

(*d*) The reference is to the valuation list made by the union assessment committee, which alone shows the annual value of properties assessed to the poor rate. The statutes in force with reference to the making and revising of valuation lists are the Union Assessment Committee Acts, 1862 and 1864. The L. G. A., 1858, s. 56, enabled a local board at their option to have a valuation made for themselves, but this option is taken away, and the valuation list must now be followed, or the poor rate in the very few cases where there is no such list. The term *valuation list* has acquired a technical meaning. As to what is the valuation list "in force" on any particular date, *cf. Metropolitan Water Board* v. *Phillips*, [1913] A. C. 86; 77 J. P. 73.

Valuation list.

A supplemental valuation list, in which the valuations of certain classes of property

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have been increased by a fixed percentage, is invalid (*Stirk & Sons* v. *Halifax Assessment Committee*, [1922] 1 K. B. 264; 86 J. P. 9).

Section 221, *post*, p. 503, provides for the amendment of the rate when made.

Rating of owners.

(*e*) See the definition of "owner" in s. 4, *ante*, p. 8.

59 Geo. 3, c. 12, s. 19, and 13 & 14 Vict. c. 99, contained provisions with regard to the assessment of *owners* to the poor rate. The former was impliedly (*West Ham* (*Churchwardens of*) v. *Fourth City Mutual Building Society*, [1892] 1 Q. B. 654; 56 J. P. 438), and the latter expressly, repealed by 32 & 33 Vict. c. 41, s. 6, so far as it relates to the poor rate (and see 45 & 46 Vict. c. 27, as to highway rates). In parliamentary boroughs under the Representation of the People Act, 1867, where a dwelling-house or tenement is wholly let out in apartments or lodgings not separately rated, the owner shall be rated in respect thereof. Under this provision a rent collector cannot be rated as the "owner" (*Nokes* v. *Strong*, [1909] 2 K. B. 625; 73 J. P. 417). For other decisions under this section, see *Griggs* v. *Stephens* (1910), 74 J. P. 67; 101 L. T. 950; *Crow* v. *Hilleary*, [1913] 1 K. B. 385; 77 J. P. 164; *R.* v. *Roberts*, [1914] 1 K. B. 369; 77 J. P. 403; *R.* v. *Carson Roberts*, [1915] 3 K. B. 313; 80 J. P. 41; *Reigate Corporation* v. *Wilkinson* (1920), 84 J. P. 17; 18 L. G. R. 353.

When an urban authority determine to put in force this provision of the present section, the owner is to be *rated*. The statute does not require the occupier to be rated and enable the owner to pay the rate less a commission as in 32 & 33 Vict. c. 41, s. 3.

The authority may, it seems, select particular owners to be rated instead of the occupiers, and omit others. The words of the section give the authority a discretion in this respect.

The L. G. B. stated that it appeared to them that a council might cease to exercise their powers of rating owners to the general district rate under the section referred to, and might rescind any resolution in force on the subject. They were not aware of any statutory provision requiring a council to give notice in the district of their intention to alter their practice in the matter.

This provision applies only where there is an occupier who is not also the owner; an occupying owner cannot under the section be rated at a reduced figure (*R.* v. *Propert*, [1911] 1 K. B. 83; 74 J. P. 474).

Rateable value.

(*f*) This appears to mean the *net rateable value* as distinguished from the *gross estimated rental*. See afterwards in the section, and see also *ante*, p. 15. Refer also to s. 4, *ante*, p. 7, for the definition of *premises*.

Upon any change in the rateable value of the premises whereby the assessment is increased to more than £10, the owner will cease to be rateable under this provision (*Norwood* (*Overseers of*) v. *Salter*, [1892] 2 Q. B. 118; 56 J. P. 535).

Short terms.

(*g*) It is to be observed that where the premises are let to weekly or monthly tenants, or in separate apartments, there is no limit as to the annual value, and in some cases the authority may prefer to rate the actual occupiers instead of the owners. The provisions of 59 Geo. 3, c. 12, s. 19, may be usefully compared with those in the text, and a decision of the House of Lords thereon may be referred to (*West Ham* (*Churchwardens of*) v. *Iles* (1883), 8 App. Cas. 386; 47 J. P. 708).

Tenements.

(*h*) Note that the word *tenements* is here used in place of *premises*, but probably there is no difference in the meaning of the enactment. See *New River Co.* v. *St. Pancras* (*Vestry of*) (1880), 45 J. P. 75. As to the meaning of the expression "tenements," see *R.* v. *Carson Roberts*, *supra*.

Discretion as to assessment on one half.

(*i*) A discretionary power is given to the authority to rate an owner in respect of tenements, whether occupied or unoccupied; but when the owner is so rated the authority have no discretion to rate him at an amount other than one-half the rateable value (*R.* v. *Barclay* (1882), 8 Q. B. D. 486; 46 J. P. 693). If a rate (in the nature of a general district rate) is really made under a local Act and not under this one, an owner may in general be rated without any abatement (*Ross U. D. C.* v. *Daniels*, p. 471, *ante*).

The allowances made under 32 & 33 Vict. c. 41, ss. 3, 4, in the case of a poor rate, are different.

Rating tithe rent-charge.

(*k*) For the proper mode of rating tithe rent-charge to the poor rate, see *R.* v. *Goodchild* and *R.* v. *Hawkins* (1858), 27 L. J. M. C. 233; 22 J. P. 14; overruled in some respects by *R.* v. *Sherford* (1867), L. R. 2 Q. B. 503; 31 J. P. 629; *Lawrence* v. *Tolleshunt Knights Overseers* (1862), 2 B. & S. 533; 26 J. P. 422; *Piggott* v. *Cuckfield Union*, [1921] 2 K. B. 647; 85 J. P. 175; *Keane* v. *Ashbocking Overseers*

(1921), 85 J. P. 270; 19 L. G. R. 759. 14 & 15 Vict. c. 50, which is not repealed by this Act, provided that tithes, tithe rent-charges, moduses, compositions real, and other payments in lieu of tithes should be assessed under 11 & 12 Vict. c. 63, s. 88, as and in the same proportion of their annual value as land used as arable, meadow, or pasture land only. The exemption conferred by the Tithe Rent-charge (Rates) Act, 1899, s. 1, is not applicable to rates made under the text (*ibid.*, s. 4). **Note to Section 211.**

As to the recovery of rates on tithe rent-charge, see the Tithe Act, 1891, s. 6, and *Roberts* v. *Potts*; *Jones* v. *Cooke*, [1894] 1 Q. B. 213; 58 J. P. 333.

By the Ecclesiastical Tithe Rent-charge (Rates) Act, 1920, the owners of tithe rent-charge are given relief in respect of the payment of rates until January 1st, 1926, and to the extents therein specified, and are by the same Act given total exemption in certain cases: see the Act, *post*, Vol. II., and see also *Keane* v. *Ashbocking Overseers*, *supra*.

(*l*) For a case where there was an exemption of all arable land exceeding two acres under a local Act, and where there was, therefore, a conflict between the provisions of the local Act and the text, see *Walton* (*Commissioners of*) v. *Walford*, cited in the note to s. 227, *post*, p. 509. Arable, meadow and pasture.

Land occupied by a booth used at the time of races, but not otherwise used, was held not to fall under any of these exemptions, and was, therefore, to be assessed at its full value (*R.* v. *Briscoe* (1856), 20 J. P. 52).

When shooting rights over land which is arable, meadow or pasture ground are let, the tenant thereof is the occupier of a special incorporeal hereditament made rateable by the Rating Act, 1874, and is liable for the full amount of the rate (*Alton U. D. C.* v. *Spicer*, [1904] 1 K. B. 678; 68 J. P. 256). Sporting rights.

With reference to the assessments of rights of sporting in cases where land was occupied without buildings, and the landlord reserved the right of sporting, the L. G. B. stated that it seemed to them that the provision in the Rating Act, 1874, s. 6 (1), to the effect that where a right of sporting is severed from the occupation of the land, and is not let, and the owner of the right receives a rent for the land the right shall not be separately valued, must now be read together with the Agricultural Rates Act, 1896, s. 5 (a), which requires that in every valuation list the value of agricultural land shall be stated separately from that of any building or other hereditament. The Board thought that the latter enactment rendered it necessary that where, in cases of the class referred to, the rateable value of any agricultural land would, under the Rating Act, 1874, be increased by reason of its being estimated as if the rights of sporting were not severed, the amount of such increase should now be entered in the valuation list as the rateable value of the rights of sporting separately from the value of the land over which they are exercised. See also next note.

(*m*) This exemption is now extended to orchards by 53 & 54 Vict. c. 17, *post*, and to allotments by 54 & 55 Vict. c. 33, *post*. It is singular that the L. G. A., 1858, s. 56, contained the provision as to the rating of woodlands, although such property was not assessable to the poor rate, except when there were saleable underwoods, before 37 & 38 Vict. c. 54. That statute, in s. 12, enacts that "the provisions of the Sanitary Acts, as defined by the Public Health Act, 1872, with respect to any special assessment of woodlands for the purpose of any rate under those Acts shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both such purposes, and made rateable by this Act to the poor rate." Under this Act, woods and woodlands must be rated in their natural and unimproved state. See *Baker* v. *Beyford* (*Overseers of*) (1876), 33 L. T. 755; *Westmoreland* (*Earl of*) v. *Southwick and Oundle* (1877), 41 J. P. 231; 36 L. T. 108. The right of sporting over such woodlands, if not severed from the occupation and let to a tenant, may be taken into account as enhancing their value (*Eyton* v. *Mold* (*Overseers of*) (1880), 6 Q. B. D. 13; 45 J. P. 54); if severed from the occupation and let, the tenant thereof is assessable in respect thereof, and is liable for the full amount of the rate (see *Alton U. D. C.* v. *Spicer*, *supra*; and see also note (*l*), *supra*). See also generally as to the rating of woodlands, a Circular of the L. G. B., dated April 18th, 1910. Woodlands, orchards and allotments.

(*n*) In 1885 the Middlesex Sessions decided that land covered with glass and used for the purposes of forcing fruit and flowers for early markets was within this exception as being a nursery or market garden (*Kay* v. *Finchley L. B.* (1885), 49 J. P. 488). And the High Court has since decided to the same effect (*Purser* v. Market gardens and nurseries.

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Worthing L. B. (1887), 18 Q. B. D. 818; 51 J. P. 596). These decisions are not affected by that in *Smith* v. *Richmond*, [1899] A. C. 448; 63 J. P. 804, to the effect that glasshouses on or in a market garden, if buildings, must, under the Agricultural Rates Act, 1896, be rated as buildings and not as agricultural land.

Land covered with water.

(*o*) These words apply to the reservoir, but not to the pipes and mains, of a water company. The pipes are merely the medium of carrying the water from the reservoir, and are not privileged (*R.* v. *Birmingham Waterworks Co.* (1861), 1 B. & S. 84; 25 J. P. 308). As to the rating of mains and pipes, see *R.* v. *West Middlesex Waterworks Co.* (1859), 28 L. J. M. C. 135; 23 J. P. 164; *R.* v. *Southwark and Vauxhall Water Co.* (1856), 6 El. & Bl. 1008; 21 J. P. 501; as to the rating of waterworks in the hands of a corporation or sanitary authority, see *Worcester* (*Mayor of*) v. *Droitwich Union Assessment Committee* (1876), 2 Ex. D. 49; 41 J. P. 355; *Liverpool* (*Mayor of*) v. *Wavertree* (*Overseers of*) (1876), 2 Ex. D. 55; 39 J. P. 101; *Peterborough* (*Mayor of*) v. *Stamford Union* (1883), 31 W. R. 949; *R.* v. *South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359; 50 J. P. 20; *Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Assessment Committee* (1886), 17 Q. B. D. 384; 50 J. P. 644; *R.* v. *Birstall L. B.* (1885), 1 T. L. R. 541; *Merthyr Tydfil L. B.* v. *Merthyr Tydfil Union*, [1891] 1 Q. B. 186; 55 J. P. 294; *Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, [1900] A. C. 3; 64 J. P. 260; *Liverpool* (*Mayor, etc. of*) v. *Llanfyllin Assessment Committee*, [1899] 2 Q. B. 14; 63 J. P. 452; *New River Co.* v. *Hertford Union*, [1902] 2 K. B. 597; 66 J. P. 724; *Liverpool* (*Mayor, etc. of*) v. *Birkenhead Union* (1905), 70 J. P. 146; 94 L. T. 509; *Metropolitan Water Board* v. *City of London Assessment Committee* (1909), 73 J. P. 142; 25 T. L. R. 246; *Liverpool Corporation* v. *Chorley Union Assessment Committee*, [1913] A. C. 197; 77 J. P. 185 (catchment area); *Metropolitan Water Board* v. *Chertsey Union* (1915), 84 L. J. Q. B. 1823; 79 J. P. 360.

The words "land covered with water" were held to apply to a dock belonging to a dock company (*R.* v. *Newport Dock Co.* (1862), 2 B. & S. 708; 31 L. J. M. C. 266; and see *per* Lord CAMPBELL, C.J., in *Peto* v. *West Ham* (*Overseers of*) (1859), 2 El. & El. 144, at p. 157; 23 J. P. 422; and *per* BLACKBURN, J., in *R.* v. *Midland Rail. Co.* (1875), L. R. 10 Q. B. 389; 40 J. P. 198); and to a canal and filter beds supported on brick arches and sometimes covered with water and sometimes not (*East London Waterworks Co.* v. *Leyton Sewer Authority* (1871), L. R. 6 Q. B. 669; 35 J. P. 677). "Dry" docks or graving docks into which water is only admitted for the floating of a vessel into and from a position for examination and repairs are not "land covered with water" within the meaning of the section (*Mersey Docks and Harbour Board* v. *Birkenhead Corporation*, [1916] 1 K. B. 695; 80 J. P. 217).

The appellants were rated at £4,700, being the full net annual value of certain pontoons, dock land and buildings occupied by them on the bank of the Tyne. At all states of the tide the water flowed under the pontoons, which were used for repairing ships and were kept in position by iron arms working on hinges, but could be detached. The pontoons were rated as part of the premises forming the shipbuilding or repairing yard of the appellants or as machinery or appliances attached and ancillary to the use of the yard, and enhancing its value as a rateable hereditament. It was held that the pontoons enhanced the value of the land beneath them, and that such land must be rated as "land covered with water" within the meaning of s. 211 (1) (b), at one-fourth only of the net annual value (*Smith's Dock Co., Ltd.* v. *Tynemouth Corporation*, [1908] 1 K. B. 948; 72 J. P. 201).

By the London Government Act, 1899, s. 19 (1), it was provided that a scheme under the Act should provide for placing Woolwich under the general law applicable to metropolitan boroughs, and for the repeal of the application thereto of the Public Health Acts; and by s. 10 (1) that a scheme under the Act should provide for all the expenses of a borough council being paid out of the general rate, but should make provision for protecting the interests of owners and occupiers of any hereditament which was exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments. The London (Rating) Scheme, 1901, by s. 2 (1), provided for maintaining the exemption by a particular method of levying the rate. It was held that the partial exemption of land covered with water was preserved (*London and India Docks Co.* v. *Woolwich Borough Council*, [1902] 1 K. B. 750; 66 J. P. 484).

As to the payment of income tax in respect of waterworks, see *Glasgow Corporation Water Commissioners* v. *Inland Revenue* (1875), 2 Ct. of Sess. Cas. (4th ser.) 708;

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Glasgow Corporation v. *Miller* (1886), 13 Ct. of Sess. Cas. (4th ser.) 489 ; 50 J. P. 503 ; *Dublin* v. *McAdam* (1887), 20 L. R. Ir. 497 ; *Dillon* v. *Haverfordwest*, [1891] 1 Q. B. 579 ; 55 J. P. 392 ; *Harris* v. *Irvine* (1900), 2 Ct. of Sess. Cas. (5th ser.) 1080 ; 65 J. P. 663 ; *Allan* v. *Hamilton Water Commissioners* (1887), 51 J. P. 727 ; *Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328 ; 76 J. P. 437 ; *Mullingar R. D. C.* v. *Rowles*, [1913] 2 I. R. 44 ; and *cf. Sugden* v. *Leeds Corporation*, [1914] A. C. 483 ; and as to payment of income tax by a river conservancy board in respect of statutory contributions from railway and canal companies, see *Humber Conservancy Board* v. *Bates*, [1914] 3 K. B. 449 ; 111 L. T. 856 ; see also *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381 ; 13 L. G. R. 969, as to payment of income tax by overseers on the yearly interest of a credit balance at a bank. See also an article on "The Assessment of Public Bodies for Income Tax," on pp. 26, 34 (Law Magazine and Review, 1908—9).

(*p*) Bridges over a canal, dry docks, and posts put up for purposes of navigation are all accessories to the canal, and must be treated as part thereof. Both the canal and its accessories must be treated as land covered with water (*R.* v. *Neath* (*Overseers of*) (1871), L. R. 6 Q. B. 707). This case may usefully be compared with *Peto* v. *West Ham* (*Overseers of*), *ante*, p. 486. Where the predecessors in title of a railway company were empowered by statute to scour, enlarge, deepen, and otherwise improve the navigation of a river, and to make a towing-path, it was held that the company were not in occupation of the bed of the river, but had merely an easement ; nor was the ownership or exclusive occupation of the towing-path vested in them ; and they were, therefore, not rateable in respect either of the bed of the river, or of the towing-path (*Doncaster Union* v. *M. S. & L. Rail. Co.* (1894), 71 L. T. 585 ; 6 R. 280). Canals.

(*q*) It was held in *South Wales Rail. Co.* v. *Swansea L. B.* (1854), 4 El. & Bl. 189 ; 24 L. J. M. C. 30, that the word "*railway*" in such a provision as the present means the way on which carriages actually go, including the line itself, the turntables, and sidings, and land used only for the supporting of this way, as for embankments, etc. All these are within the exemption, and are to be assessed at the lower rate. But adjuncts such as stations and warehouses, though necessary for the working of the railway, do not form part of it within the exemption, and land used for the latter purposes is assessable at its full net annual value. The principle of this case was followed by the House of Lords in *L. & Y. Rail. Co.* v. *Liverpool Corporation*, [1915] A. C. 152, where it was held (varying [1913] 3 K. B. 247 ; 77 J. P. 305) under a similar section in a local Act that loading ways or roads, loading platforms and mounds, sidings, turntables, hoist houses, hoists, capstans and cranes, and the land under all of these were rateable only at one-fourth of their value ; but that general approach roads, substantial roofs over lines, platforms, mounds and loading ways, and buildings generally were rateable at their full value. The earlier cases, *infra*, must now be read in the light of this decision. Railways.

A borough improvement Act contained a similar provision to the present section. Sidings and turntables occupying about ten acres of land were used for loading trucks and carriages with goods, and also as a standing place for laden and unladen carriages, and were necessary for conducting the traffic of the railway. These were held rateable at one-fourth of the net annual value (*Midland Rail. Co.* v. *Birmingham Corporation* (1865), 30 J. P. 197 ; 13 L. T. 404).

In *N. E. Rail. Co.* v. *Scarborough L. B.* (1868), 33 J. P. 244, it was held that in assessing a railway and sidings, etc. to the general district rate, the sidings, turntables, and strip of land adjacent to the line were all to be treated as part of the railway except such part of the strip of land as was not necessary for the use of the railway proper. In *L. & N. W. Rail. Co.* v. *Llandudno Improvement Commissioners*, [1897] 1 Q. B. 287 ; 61 J. P. 55, the exemption was held to extend to platforms at a station and to the roof covering them, the rails and sidings. Where the respondents were owners of a goods station containing a number of lines, sidings, and platforms for unloading goods, also turntables, cranes, a weighbridge and offices, and a yard for carts, the whole being situated half a mile from the main line, but connected with it by a line not belonging to the respondents which they were permitted to use, it was held that the goods station as a whole was not land used as a railway for public conveyance within the meaning of the Liverpool Corporation Act, 1893, and that, therefore, the respondents were not entitled to be rated in respect of it at one-fourth of the net annual value (*Williams* v. *L. & N. W. Rail. Co.*, [1900] 1 Q. B. 760 ; 64 J. P. 372).

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A railway, constructed under an Act of Parliament for the transportation of traffic and as accessory to a dock, but free to the public on payment of certain rates and tolls, is a railway within this proviso, although neither used nor intended for the conveyance of passengers (*R.* v. *Newport Dock Co.*, *supra*).

Certain local government Acts appointed improvement commissioners for sanitary purposes over a district which lay partly within and partly without the borough of Walsall. The commissioners had power to levy rates to defray expenses which they were bound to incur. The rate on any railway within the commissioners' district was, by a local Act of 1848, limited to one-fourth of the rateable value of the railway. Part of a line of railway ran through the district, and was so rated under the local Act up to 1872. By the P. H. A., 1872, urban authorities were constituted, and the mayor and town council became an urban authority for, amongst others, sanitary purposes in the borough. Both bodies, the commissioners and the town council, were given powers to make rates to defray the expenses incurred by them in the discharge of their respective duties. In the grant to the town council of rating powers, nothing was said with regard to any limit of rating upon any particular kind of property. Then came the present Act of 1875, which contained in particular s. 207, *ante*, p. 469, and the sub-section in the text. By a local Act of 1876, the limits of the borough were greatly extended, and the mayor, etc. of the borough became the sanitary authority for the extended borough. The local Act of 1848 was repealed, with the exception of certain sections. Among the excepted sections, that one which limited the amount of rateability of railways was not mentioned, but nothing was said specifically to put an end to that limited liability. It was held by the House of Lords, upon the true construction of the various Acts, public and local, that there having been no express revocation of the privilege granted in respect of rating the railway at only one-fourth of its rateable value, a borough rate calculated on its full rateable value could not be maintained (*Walsall (Overseers of)* v. *L. & N. W. Rail. Co.* (1879), 4 App. Cas. 467 ; 43 J. P. 748).

By a local improvement Act, "as to all rates made and levied by the municipal corporation of H.," the N. railway company were to be assessed at one-fourth of the net annual value. The H. corporation before and after the Act obtained their borough and watch rates in parish S. by means of warrants addressed by the mayor to the overseers of S., ordering them to pay the several amounts required out of the poor rate, and the overseers assessed the ratepayers accordingly. It was held that the H. corporation, and not the overseers, made and levied the borough and watch rates, and that the company were assessable only at one-fourth of the net annual value (*N. E. Rail. Co.* v. *Sutton* (*Overseers of*) (1886), 51 J. P. 165).

A railway company which received wharfage dues in respect of a piece of land between the lines of rails and a navigable river, was held to be properly rated at the full net annual value in respect of such land, as the land was used for a purpose other than that of a railway (*R.* v. *Taff Vale Rail. Co.* (1857), 22 J. P. 21).

Tramways, tramroads, and light railways.

In *Swansea Improvements and Tramways Co.* v. *Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357 ; 56 J. P. 248, the appellants, under powers given by local Acts, constructed a tramway communicating by points and switches with a railway in their possession, which was worked by them in conjunction with the tramway, and had been constructed by them under an Act of Parliament. It was held that the land occupied by the tramway was not "used only as a railway" within the meaning of the text, and that the appellants were not entitled to be rated in respect of it at one-fourth part only of its net annual value. This decision was followed in *Tottenham U. D. C.* v. *Metropolitan Electric Tramways, Ltd.*, [1913] A. C. 702 ; 77 J. P. 413. There, the respondents worked as one connected system certain tramways and light railways. The tramways and light railways were identical as to mode of construction and materials, and the carriages used upon them were the same. The electrical energy used for working the tramways and light railways was generated at the same power station, and was thence transmitted over a common system of cables and mains to sub-stations. The appellants rated the light railway portion within their area at one-fourth its value, but the tramway portion at its full value. It was held that the tramway portion was not "land used as a railway" within s. 211 (1) (b). In an earlier case, the appellants had constructed under a special Act a tramroad connecting two tramways. This tramroad, except where it passed over roads by means of level crossings, was constructed on lands the

exclusive property of the appellants, and these lands were fenced off from the adjoining lands. The rails were laid on sleepers in the manner usual with railways, and physically the tramroad resembled an ordinary railway. The special Act incorporated, as regards the tramroad, certain provisions of the Railways Clauses Act, 1845, and provided that, for the purposes thereof, the tramroad should be deemed to be a railway, and it also applied to the tramroad certain other provisions of the Railways Clauses Act, 1845, and certain provisions of the Railways Clauses Act, 1863, as if the same were a railway:—*Held*, that the tramroad track was "land used as a railway" within the meaning of the text, and was entitled to the partial exemption from rating (*Thornton U. D. C.* v. *Blackpool and Fleetwood Tramroad Co.*, [1909] A. C. 264; 73 J. P. 299). In another case the owners of a light railway, constructed under an Order made under the Light Railways Act, 1896, and laid in the public streets, had, by the terms of the Order, the exclusive use of the railway for carriages with flange wheels, without prejudice to the right of passage by the public over the highway with other carriages. Physically the light railway resembled a tramway:—*Held*, that by virtue of the Act of 1896, the light railway was a railway to which s. 211 (1) (b) applied, and that the owners thereof were occupiers of land used only as a railway constructed under the powers of an Act of Parliament for public conveyance within the section, and were, therefore, assessable to the general district rate in respect of the railway at one-fourth part only of its annual value (*Wakefield and District Light Rail. Co.* v. *Wakefield Corporation*, [1908] A. C. 293; 72 J. P. 315). **Note to Section 211.**

Where it was practically admitted that, in view of a recent decision as to the *status* of another part of the same tramroad, a tramroad was wrongly rated at its full value, it was held that magistrates were justified in refusing to order payment or issue a distress warrant for the full sum (*Dixon* v. *Blackpool and Fleetwood Tramways Co.*, [1909] 1 K. B. 860; 73 J. P. 219). But in general such an objection should be taken by appeal against the rate (*ibid.*; *Whaley* v. *G. N.* (*Ireland*) *Rail. Co.*, [1913] 2 I. R. 142; *Naas U. D. C.* v. *G. S. & W. Rail. Co.*, [1915] 2 I. R. 14; 48 Ir. L. T. 83).

(*r*) A railway constructed over land without purchase, but under contract to pay wayleaves, used for the purpose of working mines and carrying goods, was held not to be within this exception, although under certain Acts of Parliament it had become vested in the railway company (*N. E. Rail. Co.* v. *Leadgate L. B.* (1870), L. R. 5 Q. B. 157; 34 J. P. 598). The tramroad and light railway respectively discussed in the *Blackpool* and the *Wakefield Cases*, *supra*, were both held to have been constructed "under the powers of an Act of Parliament for public conveyance." "Constructed under statute."

(*s*) The language of this proviso is the same as that used in the P. H. A., 1848, s. 88, and several cases have been decided upon the words "*the same kind of property*." By these cases it has been settled that the words do not apply to the locality or the situation or the mode of occupation of the property, but to the nature of the property itself. See *Chelmsford Union* v. *Chelmsford L. B.* (1852), 2 El. & Bl. 500; 16 J. P. 341; *Tait* v. *Carlisle L. B.* (1853), 2 El. & Bl. 492; 18 Jur. 374; *Turner* v. *Halifax* (*Mayor, etc. of*) (1868), 9 B. & S. 623. In *Luscombe* v. *Plymouth L. B.* (1858), 27 L. J. M. C. 299; 23 J. P. 212, there was a difference of opinion whether the exemption under the local Act could be properly considered as depending upon locality and situation, or upon the nature of the property referred to; the rate was to be assessed among other matters upon all gardens, tenements, and hereditaments, adjoining to or upon any of the streets, lanes, roads, messuages, or other public places made within the populous or town parts of the borough of Plymouth, or at no greater distance than 100 feet from such street within such populous or town part. ERLE, J., considered that this described a *kind* of property, namely, *town property*, upon which the rate was to be laid, and that the other, namely, *country property*, was exempt. The other judges, however, considered this to be only a description of the locality which was to be exempt, and, therefore, that the country property in the district was not exempt from the district rate. Exemption under local Act.

By 6 Geo. 4, c. cxxxii, s. 103, the commissioners of a town were authorised to make district rates for defraying the expenses of the Act, provided that none of the rates or assessments which should be made by virtue of the Act should be

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laid upon or in respect of "any houses or buildings used and occupied exclusively for the purposes of public charity." It was held that an orphanage founded for the purpose of boarding, lodging, clothing, and educating the children of deceased railway servants, and supported partly by subscriptions from railway servants, but mainly by donations from the public, was open to such an extensive class of the community that the premises were used and occupied exclusively for the purposes of public charity within the proviso, and, therefore, exempt from rateability under it (*Hall* v. *Derby Sanitary Authority* (1885), 16 Q. B. D. 163; 50 J. P. 278), and *cf.* *Shaw* v. *Halifax Corp.*, [1915] 2 K. B. 170; 79 J. P. 257, a case decided under s. 168 of the Towns Imp. Clauses Act, 1847. For a decision where the meaning of the words "charitable purposes" as used in the Valuation (Ireland) Acts, 1852, and 1854, was considered, see *O'Neill* v. *Commissioners of Valuation* (1914), 2 Ir. R. 447.

By the Liverpool Corporation Act, 1893, s. 36, no person shall be rated to the general rate in respect of any building used for the education of the poor exclusively. An institution for the reception of pauper children from the age of two to that of sixteen, where they were received, clothed, maintained, instructed, and provided with medical attendance, was held not to be a building used for the education of the poor exclusively, within the meaning of the Act (*Hadfield* v. *Lord Mayor, etc. of Liverpool* (1899), 80 L. T. 566).

Compare with the proviso in the text, the Metropolis Management Act, 1855, s. 164, and the cases on that section cited in Woolrych's Metropolis Management Acts, at p. 105.

The exemption which is to be continued must be one of right and not one of fact only. By 41 Geo. 3, c. xxx, the occupiers of houses in S. under £8 yearly value were exempt from rates. The 4 Will. 4, c. v, rendered the owners of all houses under £10 yearly value liable to rates instead of the occupiers. By 17 & 18 Vict. c. ci, the owners of all houses under such value were rendered liable to an improvement rate; but s. 124, reciting that the occupiers of houses under the yearly value of £8 were exempt from rating by 41 Geo. 3, c. xxx, enacted that whatever exemption from rates was enjoyed in respect of the premises referred to in the recital should be enjoyed in the same way and manner and to the same extent as was enjoyed before the passing of the Act. S. having been included in the district of a local board, it was held that the owners of houses in S. under £8 were properly included in the district rate (*Coates* v. *Kingston-upon-Hull L. B.* (1856), 20 J. P. 467; 2 Jur. 1086).

Independently of this proviso, property which is exempt from poor or local rates by express statutes will be exempt from the general district rate. See note (*b*), *supra*. But a statutory exemption from "parochial rates" will not extend to general district rates (*Whenman* v. *Clark*, *ante*, p. 481).

If a corporation borrow money for purposes to which these Acts apply, and charge the borough rate, it may supersede all these exemptions, as they do not exist in reference to that rate. See *Att.-Gen.* v. *Birmingham* (*Corporation of*) (1866), L. R. 3 Eq. 552.

Provisional Order.

(*t*) See *post*, s. 297, p. 629, as to Provisional Orders, and s. 303, p. 637, as to the alteration of local Acts.

Unoccupied premises.

(*u*) This sub-section applies whether the occupiers are rated or the owners, except in the case of owners when they have elected to be rated, whether the premises are occupied or not, under the previous sub-section. See *R.* v. *Barclay*, *ante*, p. 484, *per* FIELD, J. The objection that an owner is improperly rated under this section may be taken before justices when proceedings are instituted to enforce payment: *ibid*, *per* CAVE, J. The question of rateable occupancy is one of fact, and the intention of an alleged occupier in respect to the hereditament is a governing factor in determining such question. See *R.* v. *Melladew* and the other cases collected therewith at p. 481, *ante*.

Period of rate

(*v*) It is here contemplated that the rate will be made for a certain period, but the Act does not expresssly require it to be so made. 32 & 33 Vict. c. 41, s. 14, requires the poor rate to be made for a period, and s. 16 of that Act contains a provision similar to that in the text. It has been decided that a poor rate sufficiently stated "the period for which the same is estimated" as required by 32 & 33 Vict. c. 41 s. 14, where it stated in the heading that it was estimated to meet all expenses

to be incurred "before March 25th next," but did not mention the date at which the expenses began (*Cheney* v. *Tallowin*, [1904] 2 K. B. 763; 68 J. P. 528). In practice, rates are usually made half-yearly. The period is discretionary (*Durrant* v. *Boys* (1796), 6 T. R. 580); but a standing rate would be illegal (*R.* v. *Audley* (1700), 2 Salk. 526). **Note to Section 211.**

(*w*) By this provision an outgoing occupier is at liberty to pay only a proportionate part of the rate. Hence, it must be to the interest of every ratepayer not to pay his rate as long as he can postpone it, so as to have the benefit of any abatement. The question arises whether a ratepayer entitled to any such abatement might recover the amount after payment of the full rate. The L. G. B. have stated that they have no jurisdiction to determine general questions as to the power of councils to refund to an outgoing occupier a proportion of general district rate paid by him. They observed, however, that whilst they were not aware of any enactment expressly authorising repayment by the council, it appeared to them that, having regard to the provisions of s. 211 (3), and to judicial decisions, of which *R.* v. *Parker*, *post*, p. 605, might be cited as an example, it is competent to a council to refund a proportion of the rate where the premises in respect of which the rate was paid in full have afterwards become unoccupied during the currency of the rate. Payment of proportion by outgoing occupier.

An occupier who had paid the general district rate in full left during the currency of that rate, and was succeeded by another occupier. The council repaid the outgoing occupier a proportion of the rate, and the question arose whether, the rate having once been fully paid, a proportion could be demanded by the council from the incoming occupier in respect of the period of his tenancy during the currency of the rate. The L. G. B. stated that it appeared to them that s. 211 (3) recognises the right of the outgoing occupier to pay less than the full amount of the rate, that there seemed to be sufficient authority for repayment of an excessive levy, and that, in the circumstances, such repayment would not in itself afford a sufficient ground for refusal by the incoming occupier to pay a proportion estimated in strict accordance with the sub-section. It seems clear that if a ratepayer quits premises without payment, and has no immediate successor, the authority will lose the residue of the rate.

It is for the justices to determine what proportion of the rate is due, and an order for payment, or, in default of payment, a distress warrant, for such proportion may apparently be made or issued without a fresh demand being made for such proportion (*Mansel* v. *Itchen Overseers*, [1906] 1 K. B. 221: 70 J. P. 148).

There was no similar provision with regard to the poor rate until 45 & 46 Vict. c. 20, s. 3. Under that section it has been held that the proportion should be calculated from the time when the rate was actually made (*Davis* v. *Woodfield* (1900), 64 J. P. 215; 81 L. T. 782). See also *R.* v. *Tempest* (1898), 14 T. L. R. 199, and *Cheney* v. *Tallowin*, *supra*.

Where a deed of floating charge on the assets of a company gave power to the trustees to appoint a receiver and manager who was expressed to be the agent of the mortgagor, it was held that on a receiver duly appointed under such power entering into possession of the premises and commencing to carry on the business of the company, there was a change of occupation within the meaning of 32 & 33 Vict. c. 41, s. 16, and of the text (*Richards* v. *Overseers of Kidderminster*, [1896] 2 Ch. 212.) See also *Madge* v. *Debenture Corporation* (1896), 12 T. L. R. 203. Where an order was made appointing a receiver and manager, but not directing delivery-up of possession to him, and thereupon the receiver and manager entered upon the company's premises for the purpose of managing and carrying on the business, it was held that there was no change of occupation within the Poor Rate Assessment and Collection Act, 1869, s. 16 (*In re Marriage, Neave & Co.*, [1896] 2 Ch. 663; and see *In re Crosbie* (1910), 74 J. P. 25; 8 L. G. R. 50). Occupation by a liquidator is the occupation of the company (*Re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640; and see *Re National Arms and Ammunition Co.* (1885), 28 Ch. D. 474; *Re International Marine Hydropathic Co.* (1884), 28 Ch. D. 470; *Re Blazer Fire Lighter Ltd.*, [1895] 1 Ch. 402; 71 L. T. 655).

As to the payment of rates as preferential debts in the distribution of the property of a bankrupt, see the Bankruptcy Act, 1914 (s. 33, sub-sections 1 and 2), and the notes thereto, *post*, Vol. II. As to preferential payment in the winding up of a Preferential payment of rate.

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company and on the appointment of a receiver by debenture holders, see the Companies (Consolidation) Act, 1908, ss. 107, 209, in App. I., *post*, Vol. II., and see also *National Provincial Bank of England* v. *United Electric Theatres*, [1916] 1 Ch. 132; 80 J. P. 153. As to preferential payment under a local Act in case of execution, see *Vestry of St. Marylebone* v. *Sheriff of London*, [1900] 2 Q. B. 591; 64 J. P. 628.

Discretionary division of district.

(*x*) This word gives a discretion to the authority. A local board laid out sums of money in permanent improvements, and, for defraying the expenses in part, borrowed money on mortgage of the special district rates. The permanent improvements consisted in works for lighting a town within the district, and for supplying it with water and for sewerage. A large part of the district, owing to the inclination of the ground and the character of the occupation, derived no direct or immediate benefit from these works. To defray the expenses and to raise the interest and the instalments of the debt, the board laid a special district rate on the whole district. It was held that the rate was valid, for it was discretionary with the board whether they would divide the district, and, as they had not done so, the rate must be laid on the whole (*Dorling* v. *Epsom L. B.* (1855), 5 El. & Bl. 471; 20 J. P. 20; followed and applied in *Newport (Mayor, etc. of)* v. *Lang* (1892), 57 J. P. 199). Compare the provisions of 18 & 19 Vict. c. 120, s. 159 (Metropolis), and the cases decided thereon, especially *West Middlesex Water Co.* v. *Wandsworth District Board* (1858), 22 J. P. 336.

Under a similar section a precept to overseers to levy a rate stated that the expenses, in respect of which it was needed, were not required for the equal benefit of the parish, and directed the rate to be levied as regarded such parts of the parish as consisted of land used as arable, meadow, or pasture land only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, in proportion of one-fourth part only of the net annual value of such land. The classes of land mentioned did not lie together or form any division marked out by metes and bounds, but were scattered through the parish. It was held that the precept was good (*R.* v. *L. B. & S. C. Rail. Co.* (1879), 5 Q. B. D. 89; 43 J. P. 765).

A drainage board purporting to exercise powers conferred on them by a local Act and the Sewers Acts, levied within their district drainage rates based upon a classification of the rateable properties in accordance with the quantum of supposed benefit derived from the drainage by each property apart from its contiguity to other properties. It was held that such rates should be equal rates upon all the properties benefited, and that the board had no power to make such differential classification (*Knight* v. *Langport Drainage Board*, [1898] 1 Q. B. 588; 62 J. P. 245).

In *Mayer* v. *Burslem L. B.* (1875), 39 J. P. 437, a local board resolved to divide their district into three sub-districts, and by a byelaw afterwards resolved that the resolution should not be altered unless one month's notice was given. It was held that until the resolution was duly rescinded a general rate could not be made for the whole district.

The authority cannot under this sub-section charge the general district rate with private improvements. See *Dryden* v. *Putney (Overseers of)*, *ante*, p. 473.

As to the reimbursement of the general district rate in respect of moneys borrowed for a part of the district, see s. 234, *post*, p. 527.

Provision not applicable to rural district.

The L. G. B. did not consider that the provisions of s. 211 (4) could be made applicable to a rural district. In answer to an application for an order for this purpose under s. 276, the Board stated that express provision was made in the Act as to the charging of the expenses of a rural authority, and that they considered that it would be contrary to the intention and policy of the Act to confer on such an authority the general power of dividing a contributory place in their district for the purpose of assessment in the manner authorised by the sub-section. See, however, s. 277 of the Act, and notes thereto, as to the constitution of special drainage districts, *i.e.*, special rating areas in contributory places for *all* the purposes of the Acts. The views of the Ministry of Health on the above point are unknown.

"Street."

(*y*) See the definition in s. 4, *ante*, p. 15.

Parts of street.

(*z*) See *R.* v. *L. B. & S. C. Rail. Co.*, *supra*. It would appear that a street need not be divided by a line at right angles to the centre line, but may be divided in

any reasonable way the board think fit (*per* Cotton, L.J., in *Nutter* v. *Accrington L. B.*, *ante*, p. 282).

Note to Section 211.

(*aa*) These are very indefinite terms. It seems that the apportionment is left to the urban authority, as no appeal against it is provided.

Manner of apportionment.

212. For the purpose of assessing general district rates any person appointed by the urban authority may inspect take copies of or make extracts from, any valuation list or rate for the relief of the poor within the district, or any book relating to the same.

Inspection of poor rate books for purposes of assessment.

Any officer having the custody of any such rate (*a*) or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding five pounds (*b*).

(*a*) The word "list" is here omitted. 21 & 22 Vict. c. 98, s. 56, from which this section is taken, did not give an inspection of the list. It is not, however, to be supposed that the clerk of the assessment committee, who has the custody of the list, will refuse to permit inspection, though he may not be liable to the penalty for refusal. No fee is chargeable for the inspection.

Inspection of list.

A collector of general district rates was required by the district council to make the rate, and was awarded extra remuneration for this purpose beyond his salary for collection. The assistant overseer at his request supplied a copy of additional assessments to the poor rate, and, with the approval of the council, was paid for this service. This payment was disallowed by the auditor, who surcharged the council, on the ground that they had authorised the payment. He contended that the payment could not in the circumstances be lawfully made out of the general district rate in view of the provisions of this section. On appeal, the L. G. B. decided that his decision could not be sustained. It appeared to them that while the effect of the section is to empower any person appointed by a district council to inspect, take copies of, or make extracts from the valuation list or poor rate, and while, for that purpose, the section requires any officer having the custody of any book relating to the valuation list or rate, to permit such inspection or the taking of such copies or extracts, yet the enactment does not make it illegal for a council to pay such officer for supplying the materials necessary to enable their collector to make a general district rate. The Board also considered that the council could lawfully pay for such materials, notwithstanding that the collector was required to make the rate. They accordingly reversed the decision of the auditor.

(*b*) As to the recovery of this penalty, see s. 251, *post*, p. 551.

Penalty.

Private Improvement Rate (*a*).

213. Whenever an urban authority (*b*) have incurred (*c*) or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred (*d*), in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine (*e*).

Power to make private improvement rates.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner (*f*) for the time being of the premises so long as the same continue to be unoccupied.

Note to Section 213.

What expenses included.

(*a*) The sections under which expenses may be declared to be private improvement expenses are ss. 23, 36, 41, 62, 150 of this Act, the Public Health (Water) Act, 1878, s. 3, some sections of the P. H. A., 1890, the Housing of the Working Classes Act, 1890, s. 38 (8), and the Private Street Works Act, 1892, s. 12. See s. 240, *post*, p. 536, as to rent-charges in respect of advances made for private improvements.

It seems that a rate made under the text is not a rate within the meaning of the Agricultural Rates Act, 1896, s. 9, for the proceeds are not applicable to *public* local purposes.

(*b*) Section 232, *post*, p. 520, provides for private improvement rates by a rural authority.

How expenses to be paid in first instance.

(*c*) Apparently the authority must either pay the expenses out of the funds raised by their other rates (as to which see ss. 207, 211 (4), *ante*, pp. 469, 472), or borrow the sum required under ss. 233 *et seq.*, *post*, p. 521. See notes to s. 150 as to the practice of the M. of H. in regard to borrowing for such purposes. See also s. 240, *post*, p. 536, which provides a mode of securing repayment to the lender by means of a rent-charge to issue out of the premises.

Expenses must be ascertained.

(*d*) These words seem to imply that the expenses in question have been ascertained in respect of each separate premises as by apportionment. See the note on the subject, *ante*, p. 314.

Appeal.

(*e*) See, however, the appeal to the L. G. B. given in s. 268, *post*, p. 595.

Liability of owner.

(*f*) See the definition in s. 4, *ante*, p. 8. The owner will thus be liable to a rate in which his name does not appear. A local Act provided for the making of private improvement rates for the expenses of paving new streets. The rates were to be a charge on the lands adjoining, and the remedies for their recovery were the same as those contained in the Towns Improvement Clauses Act, 1847. A rate was made in 1879, on P. for £26 4*s.* 8*d.*, payable in one sum. The appellants were then mortgagees of the premises, but were not in possession. In 1882 they entered into, and thenceforward remained in, possession and receipt of the rents. In 1885 the justices issued a distress warrant against the appellants in respect of a balance of the rate unpaid by P. amounting to £15. It was held that the justices were wrong in issuing a warrant against the appellants who were not named in the rate, though they had subsequently been in possession of the premises. It was held further that the justices were entitled to state a case as to their jurisdiction in enforcing such rate (*Rochdale Building Society* v. *Mayor, etc. of Rochdale* (1886), 51 J. P. 134; 2 T. L. R. 397).

Proportion of private improvement rate may be deducted from rent.

214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack-rent (*a*), he shall be entitled (*b*) to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rack-rent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rack-rent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof (*c*).

Provided that nothing in this section shall be construed to entitle any

person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (*d*). Section 214.

(*a*) See the definition in s. 4, *ante*, p. 15. Rack-rent.

(*b*) But this right will be controlled by the language of any covenants contained in the lease. See s. 226, *post*, p. 506, and the notes thereon; and see in *Smith* v. *Humble* (1854), 15 C. B. 321; 18 J. P. 760, an illustration of the principle of deduction of a tax chargeable on the owner from the rent paid to him. By analogy from a decision in respect of income tax, it may be that a tenant is not bound to produce the receipt for the rate when making the deduction from his rent, see *North London Property Co., Ltd.* v. *Moy*, [1918] 2 K. B. 439. Extent of right to deduct.

The lease of a house contained a covenant by the tenant to pay the rent clear of all deductions, except the landlord's property tax, and to pay . . . all taxes, rates, and assessments charged upon the premises or upon the landlord or tenant in respect thereof, and all charges imposed by any local authority upon the frontagers in respect of the taking over and the making and repair of the road abutting on the premises. The local authority paved the road, and, having apportioned the expenses among the frontagers, gave notice to the tenant under the Metropolis Management Act, 1862, s. 96, not to pay his rent without first deducting the apportioned amount of the paving expenses due from the lessor as owner of the house. As the amount of the expenses so claimed exceeded the rent then due from him, he paid the authority the whole rent. His landlord, after a demand for the rent, distrained. It was held that under s. 96 of the Metropolis Management Act, 1862 (which contains terms corresponding to those of the text and its complement (s. 226)), the payment to the authority was to be taken, not as a payment of the rent, but as a payment of the apportioned expenses, and that, as the tenant had agreed to pay those expenses, the rent remained due and the distress was lawful (*Skinner* v. *Hunt*, [1904] 2 K. B. 452; 68 J. P. 402).

It would seem that the amount can only be deducted from the next rent payable to the landlord, and that if rent is paid without deduction it cannot be deducted from any subsequent rent. See *Andrew* v. *Hancock* (1819), 1 B. & B. 37; 3 Moore, 278; *Dawes* v. *Thomas*, [1892] 1 Q. B. 414; 56 J. P. 326; and *Mile End Old Town* (*Vestry of*) v. *Whitby* (1898), 78 L. T. 80; but *cf. In re Sturmey Motors, Ltd.*, [1913] 1 Ch. 16. As regards income tax, it has been held that the deduction must be from the next payment of rent (*Hill* v. *Kirshenstein*, [1920] 3 K. B. 556).

(*c*) See the definition of owner in s. 4, *ante* p. 8. Thus, the rent received by the owner being £100, and the rent paid by him being £20, if the sum deducted by the tenant be £10, the landlord may deduct £2 from the rent paid to the owner in fee. Mesne landlord.

(*d*) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

215. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made (*a*), or such part thereof as may not have been defrayed by sums already levied in respect of the same: Redemption of private improvement rates.

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise (*b*).

(*a*) These words appear to assume that the amount of the expenses has already been ascertained, *e.g.*, by apportionment. See the note on this subject, *ante*, p. 314.

(*b*) *Quære*, what is to be done with the payment if no further works of private

Note to Section 215. improvement are required, and no money has been borrowed, or if the loan has been discharged ?

Highway Rate.

Cost of repairs of highways.

216. In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act (*a*), the cost of repair of highways shall be defrayed as follows :

(1) Where the whole of the district is rated for works of paving water supply and (*b*) sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate (*c*) :

(2) Where parts of the district are not rated for works of paving water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate (*d*) to be separately assessed and levied in those parts by the urban authority as surveyor of highways (*e*), and the cost of such repair in the residue of the district shall be defrayed out of the general district rate :

(3) Where no public works of paving water supply and sewerage are established (*f*) in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district (*g*) by the urban authority as surveyor of highways :

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act, 1858, Amendment Act, 1861), or unless such excluded part has been included in a highway district under the Highway Acts, for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district (*h*).

Provided also, that in the case of an urban district constituted after the passing of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by Schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways ; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district (*h*).

The court of quarter sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts (*h*).

(*a*) *I.e.*, one applicable to the whole of the district, not merely to a part of it. See *Hill* v. *Crediton U. D. C.* (1898), 62 J. P. 340; 78 L. T. 351. On appeal it was held that the local Act in question had been altered, and the area thereunder extended so as to be co-extensive with the urban district by virtue of an order made under the L. G. A., 1888, s. 57, though such order was silent as to the local Act. See the decision of the C. A. in the notes to s. 207, *ante*, p. 471. **Note to Section 216.** "Local Act."

(*b*) Note the copulative. If the whole of the district be rated for some, but not all, of these purposes, yet if some are provided for the whole district, the charge will be upon the general district rate; when there is a part which is not liable to any general rate for any of the purposes specified, a highway rate is to be levied under the next sub-section. See the cases cited in note (*f*), *infra*.

(*c*) See s. 209, *ante*, p. 472. It may here be mentioned that in county boroughs the cost of repairing bridges and approaches formerly repairable by the county now falls on the borough fund. See the L. G. A., 1888, s. 34 (2), *post*.

In *Ferrand* v. *Bingley U. D. C.*, [1903] 2 K. B. 445; 67 J. P. 370, the point was raised but was not decided whether when the cost of repair of highways is defrayed out of the general district rate such cost is to be deemed to be levied by an urban district council as surveyors of highways, acting under or by virtue of the Highway Act, 1835, so as to preserve an exemption given by s. 33 of that Act. The question decided in that case was that the fact that owners or occupiers of particular lands repair certain highways *ratione tenuræ* is not of itself sufficient to show that such owners or occupiers are legally exempt from liability for the repair of other highways.

(*d*) That is, a rate made and levied according to the provisions of the Highway Act, 1835, and amending Acts, of which note particularly the Highway Rate Assessment and Expenditure Act, 1882. Consequently the Agricultural Rates Act, 1896, and the Tithe Rent-charge (Rates) Act, 1899, will apply to such rate. As to the amount of the rate, see *Dyson* v. *Greetland L. B.* (1884), 13 Q. B. D. 946; 48 J. P. 596, cited on p. 266, *ante*. Highway rate.

(*e*) See s. 144, *ante*, p. 253.

(*f*) The meaning of this word has been discussed in two cases. In *Oxenhope L. B.* v. *Bradford* (*Mayor, etc. of*) (1882), 47 J. P. 21; 47 L. T. 344, the local board made a general district rate and a highway rate, and demanded the same from the respondents in respect of two reservoirs connected with the Bradford water supply. The respondents contended that the board had no power to levy a highway rate, because in 1880 they had laid down in their district a kerbstone about 200 yards long to a cinder pathway by a public road. It was held that the putting down of the kerbstone did not constitute the establishment of public works of paving within the meaning of the sub-section, and, therefore, that the appellants were entitled to levy a highway rate. FIELD, J., said: "What does *established* mean? One knows perfectly well it does not mean one single act. If a man on one particular day sells a particular class of goods, he does not thereby establish a business for the sale of those goods. I cannot think that the word *established* in this section was ever intended to mean that a single act of that kind was to be construed as being public works established in the district." The point of the dispute in this case was that the reservoirs were assessable to the district rate only at one-fourth their full net annual value. In *R.* v. *Belper L. B.* (1881), 46 J. P. 166, the facts were as follows: In the B. urban district when formed, and when the local board took charge of the repair of highways, there were some old-fashioned stone drains or culverts into which some houses sent their sewage, and into which storm water entered through gratings, but the board had not added to these, nor made any new works themselves. The board made a highway rate. It was held that the existing drains sufficiently answered the description of public works established in the district, and therefore that the expense of highway repairs should have been paid out of the general district rate, and not by a highway rate. GROVE, J., said: "I quite appreciate the argument that it is not because there may be a sewer having something of a public character, that there must necessarily be public works of sewerage within the meaning of the Act. There must be, to a reasonable extent, works of a public nature." In *Birmingham Canal Co.* v. *Docker* (1860), 24 J. P. 691, a local board had been in the habit, by arrangement with the owners or occupiers adjoining, of constructing stone kerbs along the footpaths of certain roads and streets "Established" works.

Note to Section 216.

in their district, and of paying half the expense :—*Held*, that this was not "a public work of paving" within the corresponding section of the L. G. A., 1858. It appears from the *Oxenhope Case*, *supra*, that an objection to a highway rate on the ground that public works are established in the district may be taken on the hearing of a summons to enforce payment.

"Whole" district.

(*g*) A district consisting of a parish comprising three townships came within the description set out in this sub-section. The local board levied a highway rate for one of the townships, but it was held that they had no authority to do so, and that the highway rate must be levied over the whole district (*Re Broughton L. B.* (1865), 29 J. P. 324 ; 12 L. T. 310).

Excluded parts.

(*h*) There are now no "excluded parts of parishes." By 45 & 46 Vict. c. 27, s. 9, it was provided that when at the time of the passing of that Act (July 12th, 1882), part of a parish was excluded from an urban sanitary district, but such excluded part was for purposes connected with the repairs of highways and the payment of highway rates, treated as forming part of the district, the owners and ratepayers of the excluded part might, by resolution passed at a meeting to be convened and conducted in manner provided by Sched. III., *post*, p. 685, decide that such part should be a highway parish, and if the resolution was approved by an Order of the L. G. B., the excluded part should, from a date to be fixed by the said Order, be, for the purposes connected with highways, surveyors of highways, and highway rates, considered and treated as a separate highway parish. By the L. G. A., 1894, s. 25 (4), *post*, it was provided that where the council of a rural district became the highway authority for that district (see sub-s. (1) of the same section) any excluded part of a parish under the present section, which was situate in that district, should cease to be part of any urban district for the purpose of highways, but that until the council became the highway authority such excluded part of a parish should continue subject to the said section. Rural district councils have become the highway authorities in every instance.

Certain acts not required to be done in case of highway rate made by urban authority.

217. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them (*a*) ; (that is to say,)

To lay such rate before any justices, or obtain their allowance ;

To annex thereto the signature of such urban authority (*b*) ;

To lay the same before the parishioners assembled in vestry ;

To verify before any justices any accounts kept by them of such highway rates ;

and all such accounts shall be audited (*c*) in all respects in the same way as the other accounts of the urban authority.

(*a*) These are all matters required by 5 & 6 Will. 4, c. 50, in respect of highway rates.

(*b*) According to s. 222, *post*, p. 505, the rate is to be made in such manner as the authority may appoint. It will be best to make it, like the general district rate, "in writing under their common seal." See s. 210, *ante*, p. 473.

(*c*) See ss. 245—250, *post*, pp. 540—550.

General Provisions as to Urban Rates.

Estimate to be prepared before making rates.

218. Every urban authority, before proceeding to make a general district rate or private improvement rate under this Act, shall cause an estimate (*a*) to be prepared of the money required for the purposes (*b*) in respect of which the rate is to be made, showing—

The several sums required for each of such purposes ; and

The rateable value of the property assessable ; and

The amount of rate which for those purposes it is necessary to make on each pound of such value (*c*) ; Section 218.

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat ; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same (*d*).

(*a*) Much doubt existed as to the effect of this estimate as required by the P. H. A., 1848, s. 89. The Queen's Bench at first appears to have treated it as analogous to the title of the poor rate, so that if it contained an illegal item it was bad (see *R.* v. *Worksop L. B.* (1857), 21 J. P. 451). The question afterwards arose as to whether an insufficient statement of an item would avoid the rate ; and the consequences of such a decision were so serious that the court in a subsequent case arising out of the proceedings of the same board, declined to decide whether the section had that effect, or was directory only (*R.* v. *Worksop L. B.* (1865), 5 B. & S. 951 ; 29 J. P. 759). The question is now settled by the passage at the end of this section. It is to be observed, however, that this proviso does not operate to take away the general right of appeal to quarter sessions against a general district rate given by s. 269, *post*, p. 599, where it appears from the estimate that it is proposed to make illegal payments out of the rate. See *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244 ; 67 J. P. 5 ; *cf. R.* v. *Dublin Corporation*, [1911] 2 I. R. 245. Estimate of rate.

The proper mode of carrying this regulation into effect appears to be to enter the estimate in a page of the book preceding the rate.

The authority must be careful, besides this estimate, to cause the rate to have a good *title*, otherwise it will be void (*R.* v. *Byron* (1848), 12 Q. B. 321 ; 12 J. P. 362 ; *Moulton* (*Overseers of*) v. *Eastern Counties Rail. Co.* (1856), 5 El. & Bl. 974 ; 20 J. P. 566). In *R.* v. *Wilkinson* (1886), 2 T. L. R. 869, the court refused a *mandamus* to compel justices to allow a rate on the ground that the heading was left blank and did not show what the rate was for. See *R.* v. *Monaghan R. D. C.* (1904), 38 Ir. L. T. 218, as to a rate being undated when sealed.

Although the estimate may have no legal consequence in itself, its absence may perhaps invalidate the rate ; and if its absence may have this effect, so also might an illusory or defective estimate. It may, therefore, be noticed that the Queen's Bench held, in *R.* v. *Worksop L. B.* (1865), 5 B. & S. 951 ; 29 J. P. 759, that "election expenses, filling in drains, and cleansing drains and outfall," and also "law charges, surveyor's instruments, and incidental expenses," were respectively improperly grouped together in the estimate.

(*b*) Though the estimate will not affect its validity, it must not be considered that a rate will be valid if made for purposes which are illegal, and which may be shown in the estimate. See *Smith* v. *Southampton Corporation*, *supra*. Rates for illegal purposes.

The charges of an accountant employed to investigate the accounts of a local board were held by justices in quarter sessions to be illegal, being, under the circumstances of the case, in their judgment unnecessary ; and the court, holding that this was a question for the sessions, declined to reverse their decision (*R.* v. *Worksop L. B.* (1865), 5 B. & S. 951 ; 29 J. P. 759).

It was held that a local board could not make a district rate to pay the costs of defending certain *quo warranto* informations brought against individual members of the board, which did not impeach the *status* of the board as a whole ; nor the expenses of opposing a Bill promoted by the local gas company for an increase of powers. But the expenses of opposing Chancery proceedings against the board in respect of works which they had caused to be executed were held to be a legal charge, although the suit was not ended when payment was proposed to be made (*R.* v. *Marris* (1857), 21 J. P. 580 ; 28 L. T. 266). Where the consent of the ratepayers had not been obtained, the court restrained an urban district council from applying any part of the general district fund or rate in payment of the expenses incurred in opposing a Bill (*Att.-Gen.* v. *Rickmansworth U. D. C.* (1902), 66 J. P. 410 ; 86 L. T. 521) See now, however, the provisions of the Borough Funds Acts referred to on p. 502, *post*. And see *R.* v. *Bridgewater* (*Mayor of*) (1839), 10 A. &. E. 281 ; *R.* v. *Leeds*

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(*Mayor of*) (1843), 4 Q. B. 796. It has been held in the case of a municipal corporation, that they are justified in defraying out of the corporate funds the expenses of defending *quo warranto* informations against individual members of the corporation, if the object of such informations was to impeach the title or destroy the legal existence of the corporation as a body (*Holdsworth* v. *Dartmouth* (*Mayor of*) (1840), 11 A. & E. 490; 4 Jur. 605; and see *Att.-Gen.* v. *Norwich* (*Corporation of*) (1837), 2 My. & Cr. 406; 1 Jur. 398).

The court affirmed the disallowance by a district auditor of the cost of repairing an omnibus purchased by a district council for the purpose of conveying its members about the district when performing their ordinary duties as members. The district was a large and growing one, and members had frequently to go from one part of it to another (*R.* v. *Dolby* (1902), 66 J. P. 521; 87 L. T. 27).

A metropolitan vestry were restrained from applying any part of their rates in paying the expenses of a dinner or ball or other ceremonies in connection with the opening of a new vestry hall. But, as no part of the rates had been actually so applied, it was held that individual vestrymen who had voted for the resolution for the dinner, etc., could not be made parties to the action for the purpose of obtaining costs from them (*Att.-Gen.* v. *Bermondsey* (*Vestry of*) (1883), 23 Ch. D. 60; 47 J. P. 453. And see *R.* v. *Bideford* (*Mayor of*) (1883), 47 J. P. 756; *Att.-Gen.* v. *Blackburn* (*Corporation of*) (1887), 57 L. T. 385; *Att.-Gen.* v. *Batley* (*Mayor, etc. of*) (1872), 26 L. T. 392; *Att.-Gen.* v. *Cardiff* (*Mayor of*), [1894] 2 Ch. 337).

In *O'Shea* v. *Cork R. D. C.*, [1914] 2 I. R. 16, the Irish M.R. laid down the rule that where misconduct in performance of their duties is alleged against a public body, and it becomes necessary to take legal proceedings against them, the individual members who are principally responsible ought to be made special defendants for the purpose of visiting them with the costs.

An action for an injunction to restrain improper payments out of rates must be in the name of the Attorney-General (*Holden* v. *Bolton* (*Corporation of*) (1887), 3 T. L. R. 676, and *cf. Weir* v. *Fermanagh C. C.*, [1913] 1 I. R. 63, 193). See *London C. C.* v. *Att.-Gen.*, on p. 208, *ante*, as to his discretion in allowing his name to be so used.

The jurisdiction of the High Court to declare payments actually made to be illegal is in practice exercised subject to the power of the M. of H. under the Poor Law Audit Act, 1848, s. 4, incorporated by s. 247, *post*, p. 541, to remit improper payments which have been disallowed by the auditor (*Att.-Gen.* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516; 64 J. P. 276; *Att.-Gen.* v. *Tottenham U. D. C.* (1909), 73 J. P. 437).

The L. G. B., in pursuance of their statutory powers, in anticipation of the King's coronation, issued a General Order whereby they sanctioned beforehand "any reasonable expenses" that might be incurred by any local authority in connection with any local public celebration on the occasion. The defendant council passed a resolution that a sum not exceeding three farthings in the pound should be expended out of the rates in carrying out the coronation festivities in the district. The three farthings rate would produce about £240. The Attorney-General, at the relation of certain ratepayers, brought an action to restrain the defendants from paying the £240 out of the rates on the ground that such payment would be *ultra vires* and illegal, and applied for an interim injunction. It was held that, whatever might be the merits of the action, the case was not one for an interim injunction (*Att.-Gen.* v. *East Barnet Valley U. D. C.* (1911), 75 J. P. 484; 9 L. G. R. 913).

In *R.* v. *Marris*, *supra*, it was held that as the rate was made for some items which were illegal, it was altogether void. This is in conformity with *Chesterton* v. *Farlar* (1836), 1 Curt. 345. See also *R.* v. *Sillifant* (1835), 4 A. & E. 354; 5 Nev. & M. 640; *R.* v. *Byron* (1848), 12 Q. B. 321; 12 J. P. 362; *Tozer* v. *Child* (1856), 6 El. & Bl. 289; 20 J. P. 805. It appears, however, that the rate may be enforced as long as it is good on the face of it. When this is the case the rate can only be impeached by appeal to quarter sessions on the ground that it has been made for an illegal purpose (*Luton L. B.* v. *Davis* (1860), 29 L. J. M. C. 173; 24 J. P. 677; *Sandgate L. B.* v. *Pledge* (1885), 14 Q. B. D. 730; 49 J. P. 342).

As illustrating the principle that local authorities may not pay out of their funds any sum for a purpose not expressly authorised by statute, reference may be made to a number of cases decided with regard to the power of a corporation to defray out of the rates expenses incurred in defending proceedings against their officers

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for acts done in the performance of their duty. In *R.* v. *Thompson* (1844), 5 Q. B. 477 ; *R.* v. *Stamford (Town Council of)* (1844), 13 L. J. Q. B. 177 ; 8 Jur. 588, it was held that a corporation could not pay the costs of defending borough constables in a prosecution against them for acts done in the course of their duty. See also *R.* v. *Lichfield (Mayor of)* (1847), 10 Q. B. 534. In *Pickering* v. *Stephenson* (1872), L. R. 14 Eq. 322, it was decided that a trading company could not pay out of their funds the cost of prosecuting a person for libelling the council of the company. And it has been held that expenses incurred by an officer of a borough in defending his character in relation to matters arising out of his official duties could not lawfully be paid out of the borough fund (*R.* v. *Liverpool (Mayor of)* (1872), 41 L. J. Q. B. 175 ; 26 L. T. 101 ; see also *Att.-Gen.* v. *Compton* (1842), 1 Y. & C. 417). The chief constable of a borough had, by direction of borough magistrates, laid an information against a person for conspiracy, and an action for malicious prosecution was brought by such person against him, and verdict recovered for £200. It was held that the council could not pay the chief constable's costs out of the borough fund or rate (*R.* v. *Exeter (Mayor of)* (1880), 6 Q. B. D. 135 ; 45 J. P. 158). On the other hand, when officers were sued for acts done on behalf of the authority, and under their direction or with their sanction, the authority might, as it seems from *Att.-Gen.* v. *Pearson* (1846), 10 Jur. 651, pay the costs, and even damages awarded against those officers, out of their funds. In *Stops* v. *Northamptonshire JJ.* (1887), 4 T. L. R. 78, it was held that the justices of a county could not lawfully pay out of the county fund the costs and damages incurred by the chief constable in an action brought against him in respect of acts done in the execution of his duty. It should be observed that these cases were all decided before the Municipal Corporations Act, 1882, s. 226, and the L. G. A., 1888, s. 66, which would now justify some, if not all, of the payments held to be illegal as above stated. But these Acts apply only to municipal corporations and county councils, and the principle of the decisions still applies to other local authorities. Reference should, however, be made to s. 265, *post*, p. 584, as to suing officers of local authorities. In a later case it was held, on the same principle, that a municipal corporation cannot, where there is no surplus of the borough fund, legally pay thereout costs incurred by the chief constable in opposing by the direction of the council appeals against the refusal of justices to renew the licences of publicans. And it was doubted whether, if there had been a surplus, it could be legally applied to payment of such costs (*Tynemouth (Mayor, etc. of)* v. *Att.-Gen.*, [1899] A. C. 293 ; 63 J. P. 404).

When money had been bonâ fide paid upon an order to a town council of the town clerk for professional business done by him as a solicitor upon instructions given by the corporation, the mere fact of his having had no retainer under seal was held to be no sufficient ground why the court should, under 7 Will. 4 & 1 Vict. c. 78, s. 14, quash the order of the council as a misapplication of the borough funds. It was further held that costs incurred by the council in taking legal advice as to the validity of a borough rate, litigation being threatened if they should persevere in their intention to enforce it, were costs chargeable upon the borough fund (*R.* v. *Prest* (1850), 16 Q. B. 32 ; 14 J. P. 750). And see *R.* v. *Norwich (Mayor of)*, *ante*, p. 405.

The application of the doctrine of *ultra vires* to the proceedings of public boards cannot be fully discussed here, and reference should be made to the work of Mr. Seward Brice on the subject. A few cases may be cited, however, to illustrate the doctrine. In *East Anglian Rail. Co.* v. *Eastern Counties Rail. Co.* (1851), 11 C. B. 775, Jervis, C.J., said : "It is clear that the defendants have a limited authority only, and are a corporation only for the purpose of making and maintaining the railway sanctioned by the Act ; and that their funds can only be applied for the purposes directed and provided for by the statute." In *Bateman* v. *Ashton-under-Lyne (Mayor of)* (1858), 3 H. & N. 323 ; 27 L. J. Ex. 458, it was held that a waterworks company having certain powers for the supply of water to a district might lawfully apply to Parliament for the extension of those powers, and consequently contract with an engineer for the supply of plans and estimates essential to such application. Bramwell, B., however, dissented from this judgment. See also *Stockport Waterworks Co.* v. *Manchester (Mayor of)* (1863), 7 L. T. 545 ; 9 Jur. (N.S.) 266 ; *Taylor* v. *Chichester and Midhurst Rail. Co.* (1870), L. R. 4 H. L. 628 ; *Chatham L. B.* v. *Rochester Paving Commissioners* (1865), L. R. 1 Q. B. 24 ; 29 J. P. 805 ; *Att.-Gen.* v. *London C. C.*, [1902] A. C. 165 ; 66 J. P. 340 ; *Att.-Gen.* v. *Manchester Corporation*

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[1906] 1 Ch. 643; 70 J. P. 201; *Att.-Gen.* v. *Mersey Rail. Co.*, [1907] A. C. 415; 71 J. P. 449; *Att.-Gen.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453, and cases cited on p. 120, *ante*.

It seems to have been established by numerous decisions that when public bodies take proceedings in Parliament to protect the property under their control and management, the expenses which they incur are chargeable upon the funds at their disposal; but if they originate parliamentary measures for the purpose of increasing their property or extending their powers, they must rely upon obtaining express sanction from the legislature for charging the costs upon any of their funds. It is unnecessary to enumerate the decisions in question, for the Borough Funds Acts, 1872 and 1903, in App. I., *post*, Vol. II., now enable local authorities in certain cases to charge on their funds the costs of promoting or opposing parliamentary or other proceedings for the benefit of the inhabitants. And although there may be cases in which such expenditure might be justified without the aid of these statutes, it will be found in practice advisable to conform to their formalities in almost every instance. A private Bill before Parliament provided for the punctual payment of interest on the share capital of the undertaking by declaring that the overseers of the parish in which the undertaking was situated should, when required to do so, raise as part of the poor rate money for the payment of such interest. The overseers, with the authority of the vestry, successfully opposed the Bill, and, in so doing, incurred certain expenses which were not immoderate and were allowed by the auditor. It was held that the overseers were entitled to charge the expenses so incurred upon the poor rate (*R.* v. *White* (or *Sibly*) (1885), 14 Q. B. D. 358; 49 J. P. 294; see also *Cleverton* v. *St. German's R. S. A.*, cited in the notes to the Borough Funds Act, 1872, in App. I., *post*, Vol. II.). In *Att.-Gen.* v. *Lambeth* (*Vestry of*) (1888), 4 T. L. R. 257, an injunction was granted restraining the vestry from applying their funds in promoting a Bill in Parliament. A municipal corporation is not entitled to charge upon the rates leviable by them under the Public Health Act, the costs incurred in opposition to a private Bill, although such opposition be successful and the Bill would, if passed, have put an end to the existence of the corporation (*Leith* (*Magistrates and Council of*) v. *Leith Harbour Commissioners*, [1899] A. C. 508). An urban district council incurred costs in opposing in Parliament a Bill for the confirmation of a Provisional Order made by the L. G. B. for carrying into effect a scheme for the inclusion of the district of the council in adjoining areas. It was held that the costs were properly incurred under ss. 297 and 298, *post*, pp. 629, 632, and that they were not subject to the requirements of the Borough Funds Act, 1872, but came within the exception of s. 8 of that Act (see *Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 403).

Certiorari for rates.

In Ireland it has been held that there is jurisdiction to quash an illegal rate on *certiorari*, although, where the rate is subject to appeal, *certiorari* ought not to issue, at all events if the rate is good on its face (see *R.* v. *Dublin Corporation*, [1911] 2 I. R. 245, and cases there cited).

(*c*) The period for which the rate is to be made is not included in the matters which must appear in the estimate. This must, however, appear in the rate itself. See *ante*, p. 490, s. 211, note (*v*).

(*d*) See note (*a*), *supra*.

Rates to be open to inspection.

219. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate (*a*) made previously thereto, and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds (*b*).

(*a*) This is an additional inspection to that provided for in the preceding section. On this occasion copies or extracts may be taken, but no such provision is made in respect of the previous inspection. Moreover, refusal of inspection in this case, subjects the officer to a penalty recoverable on summary conviction. No such

summary remedy is given in the previous case. *Cf. Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708, as to a shareholder's statutory right to copies of certain books of a company. **Note to Section 219.**

See s. 210, *ante*, p. 473, as to the notice to be given of the intended making of the rate.

(*b*) See s. 251, *post*, p. 551, as to the recovery of this penalty.

220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description. Description of owner or occupier in rates.

Nevertheless, it is most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings when the name of the party proceeded against is not stated. Moreover, if it can be shown that the name was known to the authority, it may perhaps be held that the use of the term *owner* or *occupier* is not justified. Again, it may well be questioned whether, although these words are used, the assessment will be available against an owner or occupier who may succeed to the premises. See notes to s. 267, *post*, p. 593.

221. An urban authority may from time to time amend any rate made in pursuance of this Act by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed (*a*), or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated (*b*), or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate. Rates may be amended.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made (*c*), and with respect to him an amended rate shall be considered to have been made at the time when he first received notice (*d*) of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted until seven days (*e*) after such notice has been given to him.

(*a*) Except in the metropolis, where it can be done by the justices (see Valuation (Metropolis) Act, 1869, s. 72, and *Westminster Corporation* v. *Edgcome* (1903), 67 J. P. 25), there is no such power in the case of a poor rate: see *Pembroke* v. *Wye (Overseers of)* (1883), 47 J. P. 359; *Sawtry School Board Election Petition*; *Yethard* v. *Turnhill*, Times, May 21st, 1895; *R.* v. *Monken Hadley Overseers* (1910), 74 J. P. 169. For an Irish case decided under s. 174 of the Towns Improvement Clauses Act, 1847, see *Naas U. D. C.* v. *Gt. Southern and Western Rail. Co.*, *ante*, p. 489. Insertion of names.

(*b*) These words raise a difficulty. An under-rating or over-rating may arise out of an error in computation, or an inaccurate reference to the valuation list, and this would clearly be within the section. But it may be contended that the value is wrongly entered in the valuation list. Nevertheless, according to s. 211, that list is to be followed. Can the authority entertain this inquiry? If so, they can depart from the valuation list wholly or to a great extent. This is so contrary to the Under and over-rating.

Note to Section 221.

apparent intention of the legislature that the courts can hardly be expected to sanction it. At the same time, it is not easy to see any serious ground for the appeal given by the section in respect of any other amendment.

S. was assessed to a general district rate, and five weeks later applied to the assessment committee to reduce his assessment, which they did; he did not appeal against the general district rate. The urban authority took out a summons against him under s. 256, and the justices made an order for payment of the rate as originally made. It was held that they were wrong, and ought to have held it a sufficient cause for non-payment that the assessment in the valuation list had been reduced before the summons was taken out (*Sheffield Waterworks Co.* v. *Mayor, etc. of Sheffield* (1885), 55 L. J. M. C. 40; 50 J. P. 6). From this case it may be inferred that upon an alteration of the valuation list during the currency of an urban rate, the rate should be amended under this section, or in any event can only be enforced upon the altered valuation. Respondents were summoned for non-payment of the balance of the third instalment of general district and water rates and special rates in the nature of general district rates leviable under a local Act which provides that the corporation may levy any rate by any number of instalments, and that all their powers for recovering any such rate shall apply to each instalment thereof, as if the same were a separate rate. After payment of the first and second instalments the valuation list was, on notice of objection by the respondents, amended by reducing both the gross estimated rental and the rateable value, and the rates were altered accordingly. When a demand was made for payment of the amount claimed in respect of the third instalment, calculated upon the reduced rateable value, the respondents claimed to deduct from the third instalment the difference between the sums paid by them in respect of the first and second instalment, and the sums which would have been payable in respect of those instalments if they had been calculated upon the reduced rateable value. It was held that the instalments were not separate rates but instalments of one rate, and that the respondents were entitled to make the deduction claimed (*Hastings Corporation* v. *Queen's Hotel Co., Ltd.* (1907), 71 J. P. 369; 97 L. T. 310; and *cf. M'Dermott* v. *M'Morrow* (1904), 38 Ir. L. T. 200).

The opinion of the L. G. B. was once sought as to the power of an urban district council, in the event of a general district rate being demanded and paid whilst an appeal against the assessment of a particular property was under consideration, to return a proportion of the rate if the assessment was reduced. The Board, after referring to the *Sheffield Waterworks Case, supra*, observed that it would be for the auditor to decide as to the legality of any repayment made by the council. They added, however, that it was open to the council to consider whether, in view of the case above referred to, and of the principle of the decision in *R.* v. *Great Western Rail. Co.* (1874), 38 J. P. 822, an amount corresponding to any reduction of rateable value made by the assessment committee in the valuation list might not properly be repaid by the council in respect of a general district rate current at the date of the occupier's notice of objection to the valuation list in force. See also *Tynemouth Union* v. *Backworth Overseers*, in notes to s. 231, *post*, p. 519, and *Keeton* v. *Sheffield Coal Co.* (1901), 70 L. J. K. B. 374; 65 J. P. 341.

An urban district council inquired of the L. G. B. whether they would be justified in adding new properties in the rate book which have been occupied, and have been included in a supplemental valuation list, but which were not at the time of the general district rate included in the rate book. The Board disclaimed authority to decide the question, but stated that they are disposed to consider that where a supplemental valuation list has been approved by the assessment committee with reference to a new house or building under the Poor Law Amendment Act, 1868, s. 38, the council may at any time before the end of the period for which the general district rate was made assess the occupier or owner of the premises to the rate under s. 221. Under the proviso to the section, however, the amended rate would be considered to have been made at the time when the person assessed first received notice of its amendment.

(*c*) See s. 269, *post*, p. 599. Doubtless a ratepayer may appeal against the reduction of another person's rate on this amendment, if he can find it out.

Notice of amendment.

(*d*) As to the authentication and service of this notice, see ss. 266, 267, *post*, p 593.

(*e*) The days will be one inclusive and one exclusive.

222. All rates made or collected (*a*) under this Act shall be published in the same manner as poor rates (*b*), and shall commence and be payable at such time or times (*c*), and shall be made in such manner and form (*d*), and be collected by such persons, and either together or separately, or with any other rate (*e*) or tax, as the urban authority may from time to time appoint: Provided that no publication shall be required of any private improvement rate (*f*).

Section 222. —— Publication and collection of rates.

(*a*) There does not appear to be any rate collected under this Act which is not made under it. Collection.

(*b*) The P. H. A., 1848, s. 99, required the rate to be published in the same manner as the poor rate. But it was decided that rates made under that section were not void if not published in the same manner as the poor rate, there being no words of avoidance in the Act as in 17 Geo. 2, c. 3, which relates to the poor rate (*Lefeuvre* v. *Miller* (1857), 8 El. & Bl. 321; 21 J. P. 436). Publication.

A local Act, which made provision for the collection of the general district rate by overseers, directed that "such rate shall be made assessed and levied by the overseers in the same manner and under the same provision . . . as in the case of the poor rate," and by a later sub-section that "the overseers shall recover and enforce the poor rate in the same manner as the general district rate is recoverable and enforceable under the P. H. A., 1875." It was held that the general district rate was placed on the same footing as the poor rate as regards necessity for publication, and that an objection on the ground of want of publication might be taken on a summons for a distress warrant, although the rate was good upon the face of it (*Beeson* v. *Derby Overseers* (1903), 67 J. P. 282; 89 L. T. 47).

Publication of a poor rate is effected by giving public notice thereof on the following Sunday, by affixing the notice before morning or evening service at or near the principal door of every church and chapel of the Established Church at which divine service is actually performed; if the parish contains no such building, the notice must be affixed in some conspicuous place. See the Poor Rate Act, 1743; the Parish Notices Act, 1837, s. 2; the Poor Rate Assessment and Collection Act, 1882, s. 4; *R.* v. *Marriott* (1840), 12 A. & E. 779; *R.* v. *Whipp* (1843), 4 Q. B. 141; *Ormerod* v. *Chadwick* (1847), 16 M. & W. 367; *Burnley* v. *Methley Overseers* (1859), 1 El. & El. 789; 28 L. J. M. C. 152, and *cf. R.* v. *Wolferstan*, [1893] 2 Q. B. 451; 57 J. P. 452.

Allowance by justices is not necessary in the case of any rate made by an urban authority under this Act.

(*c*) This enables the authority to make a rate payable by instalments. Instalments

If the council wish that the rate should be collected by instalments, they should give formal directions under s. 222 to that effect and fix the times of payment of the instalments. It is not clear that where a rate is not duly made payable by instalments, the council may in any case in which part payment of a rate is tendered allow the payment of an instalment to be accepted, but there would seem to be no practical objection. The council, of course, would be responsible for securing that the due collection of the rate was not prejudiced by any arrangements made.

If no time is fixed by the authority under the section as the date at which such a rate is payable, it would seem that the rate is payable on demand. See also s. 256, *post*.

As regards a water rate, reference must be made to the Waterworks Clauses Act, 1847, s. 70, which prescribes payment at the usual quarter days.

(*d*) Though the form may be prescribed by the authority, it is submitted that this provision does not authorise the omission of any material part such as the usual heading, as to which see *R.* v. *Wilkinson* (1886), 2 T. L. R. 869. Form.

(*e*) This must mean some other rate or tax over which the authority have a control. It often proves inconvenient to have several rates and taxes collected together, and therefore the authority which levies a rate ought to have exclusive power of regulating its collection. It cannot be presumed that the legislature intended that such power should be interfered with by the urban authority. Reference should be made to 25 & 26 Vict. c. 82, which provides for the consolidation of the proceedings for the Collection with other rates.

Note to Section 222.

recovery of several local rates and taxes due from the same person before the justices. Poor rate and general district rate may under that Act be included in one summons (*R.* v. *Glover, Ex parte Hornsey U. D. C.* (1900), 35 L. J. N. 269).

As to recovery of rates generally, see s. 256, *post*, p. 64.

(*f*) See s. 213, *ante*, p. 493. This rate is merely a reimbursement of expenses incurred for the benefit of a property owner of which he has had ample notice.

Evidence of rates.

223. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as primâ facie evidence of the making and validity of the rates mentioned therein.

Section 262, *post*, p. 582, provides that no rate shall be vacated for want of form; but if the rate show on the face of it that it is defective in substance (as if there be no estimate, or if it appear to be made for illegal purposes), it is presumed that the objection may nevertheless be taken to it with success. Hence, it is incumbent upon authorities to prepare rates with proper attention and care. The text only makes the production *primâ facie* evidence of the rate's validity.

Power to make deduction from rate in certain cases.

224. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

See s. 24, *ante*, p. 86.

This section is difficult to apply. The P. H. A., 1848, s. 86, provided for a special district rate in respect of the making of a sewer, and contained a proviso as in the text, which was not unreasonable. By 21 & 22 Vict. c. 98, special district rates were abolished, but the proviso was re-enacted as a substantive clause, and consequently it is inserted as above, but how an authority can carry it into effect in their general district rate is not known. They will make the full rate and insert that amount in the book, but from this amount so formally inserted, they may deduct. Assuming that the section can be carried into execution, though the words are discretionary, the nature of the case seems to require that they should be construed as imperative, with this qualification, that the authority must exercise their judgment as to the amount and the period of the deduction.

In response to an application from a rural authority for an order investing them with the powers of s. 224, the L. G. B. said that apart from any other question it appeared to them that such a power could not properly be exercised by an authority who did not levy rates, but issued precepts for the sums they required.

Power to reduce or remit rates.

225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Such remission will not deprive the person of a parliamentary or municipal franchise on the ground of receiving parochial relief (*Mashiter* v. *Dunn* (1848), 18 L. J. C. P. 13). Therefore, presumably it will not deprive a parochial elector of the franchise for the purposes of elections of urban authorities elsewhere than in municipal boroughs or of rural authorities.

Saving for existing agreements.

226. Nothing in this part of this Act shall alter or affect any lease contract or agreement made or entered into between the landlord and tenant of any premises.

See the similar provision in s. 104, *ante*, p. 189, and the notes thereon.

Note to Section 226.

A person who agrees to take a lease at a "net annual rent of £—," cannot object that the lease contains a covenant for him to pay the sewers rate (*Bennett* v. *Womack* (1828), 7 B. & C. 627).

Covenants to pay rates.

By an agreement marsh lands were demised subject to a condition that the tenant should pay all outgoings, rates, taxes, costs, etc., whether parochial or parliamentary, which were and might be chargeable on the lands. An assessment was made by commissioners of sewers for the permanent benefit of the lands, in certain proportions upon the owners and occupiers. For four years the tenant paid in the first instance both his own share and that of his landlord, and upon each half-year's settlement of account with the landlord's agent, who was ignorant of the terms of the agreement, the sum so paid was allowed towards the rent, and receipts were given for the balance :—*Held*, in an action brought upon the agreement to recover the sums so allowed as arrears of rent, that the facts supported a plea of payment of the rent (*Waller* v. *Andrews* (1838), 7 L. J. Ex. 67 ; 3 M. & W. 312). If a tenant voluntarily pays taxes which he alleges ought to have been paid by the landlord and afterwards pays rent without deduction, he cannot recover the amount against the landlord (*Saunderson* v. *Hanson* (1828), 3 C. & P. 314 ; and see *Andrew* v. *Hancock* (1981), 1 B. & B. 37 ; 3 Moore, 278 ; *Fuller* v. *Abbott* (1811), 4 Taunt. 105, and cases collected in note (*b*) under s. 214, *ante*, p. 495). To entitle a tenant to deduct from his rent a payment which he is entitled to deduct under a statute, the money must have been actually paid (*Ryan* v. *Thompson* (1868), L. R. 3 C. P. 144 ; 32 J. P. 135). In *Reigate Corporation* v. *Wilkinson* (1920), 84 J. P. 17 ; 18 L. G. R. 353, the tenants had paid the rates to the landlord as part of the rent, and the landlord had requested the authority to send the claims for the rates to him, but the authority had not exercised their option under s. 211 (1) (*a*), *ante*, p. 478, to charge the owner direct.

It was held that the defendant was liable, as by the correspondence he had agreed to discharge the rates if the authority withheld application to the tenants.

As to the rating of mines, and the right to deduct one-half of the rates under the Rating Act, 1874, s. 8, see *Devonshire* (*Duke of*) v. *Barrow Hæmatite Steel Co.* (1877), 2 Q. B. D. 286 ; *Challoner* v. *Bolckow* (1878), 3 App. Cas. 933 ; 42 J. P. 756.

A. demised land to B. upon a building lease, at a yearly rent of £60 clear of all rates and assessments, sewers rates and land tax excepted, with the usual covenent for payment of rent. B. by building on the land increased its rateable value to £300 per annum :—*Held*, that he was only entitled to deduct the sewers rate and land tax upon the original rent, and not upon the improved value (*Smith* v. *Humble* (1854), 15 C. B. 321 ; 3 C. L. R. 225 ; and see *Watson* v. *Atkins* (1820), 3 B. & A. 647 ; *Graham* v. *Wade* (1812), 16 East, 29 ; *Watson* v. *Home* (1827), 7 B. & C. 285). *Watson* v. *Home*, and *Smith* v. *Humble*, *supra*, were followed by the Court of Appeal in *Mansfield* v. *Relf*, [1908] 1 K. B. 71 ; 71 J. P. 556. See all these three cases distinguished in *Salaman* v. *Holford*, [1909] 2 Ch. 602. When a lessee covenanted that he would pay all taxes, charges, rates, tithes, etc., which then were or should at any time thereafter during that demise be taxed, charged, assessed, or imposed upon the said demised premises :—*Held*, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself (*Hurst* v. *Hurst* (1849), 4 Ex. 571) ; and as to inhabited house duty, see *Eastwood* v. *McNab*, [1914] 2 K. B. 361.

Contribution to bridge repairs *ratione tenuræ*.

A landlord, liable with others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property tax excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair such part during the continuance of the Act ; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justices' warrant was given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the liability, made further provision as to holding meetings, and levying rates :—*Held*,

Note to Section 226.

that the original liability for contribution to repairs did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and, therefore (the court finding no clause in the statutes which extended the ultimate liability to lessees and occupiers as well as owners) that the lessee having been compelled, in the lessor's default, to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor (*Baker* v. *Greenhill* (1842), 3 Q. B. 148; 11 L. J. Q. B. 161).

Sewer rate.

A sewer rate is not a "parliamentary tax" within the meaning of a covenant to pay such taxes (*Brewster* v. *Kitchel* (1697), 2 Salk. 615; *Palmer* v. *Earith* (1845), 14 L. J. Ex. 256; 14 M. & W. 428). See also *Earl of Cork* v. *Cork C. C.*, [1903] 2 I. R. 490.

Drainage rate under local Act.

A tenant from year to year agreed to pay all outgoings. In the course of the tenancy a new drainage rate was imposed by a local Act, to be paid by the tenant, who might deduct it from the rent in the absence of any agreement to the contrary. It was held that the tenant could deduct it, for his agreement did not apply to such new rate, but that the current rate could only be deducted from the current rent, and past payments could not be deducted (*Vestry of Mile End Old Town* v. *Whitby* (1898), 78 L. T. 80).

Water rate.

In a lease of a shop, basement and three rooms on the third floor of a house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was supplied separately by a water company to the shop and basement, and was paid for by the tenant. It was held that he was entitled to recover from the lessor the sum so paid, as being a "rate" within the meaning of the covenant (*Direct Spanish Telegraph Co., Ltd.* v. *Shepherd* (1884), 13 Q. B. D. 202; 48 J. P. 550). This decision was discussed in *Badcock* v. *Hunt* (1888), 22 Q. B. D. 145; 53 J. P. 340, where, by a covenant in a lease of a warehouse, the lessor covenanted to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of London, or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises, or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the premises for domestic purposes by the New River Company under the Waterworks Clauses Act, 1847, the lessees paid the water rates due therefor and sought to recover them from the lessor:—*Held*, that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and that the lessees were not entitled to recover the same from the lessor. It was again discussed, and followed with reluctance by BUCKLEY, J., in a case where in a lease of the whole of the basement and a portion of the ground floor of a block of buildings, the lessors covenanted to pay "all rates and taxes payable in respect of the said demised premises," and water was supplied for domestic purposes by a water board to the whole block by a common pipe (see *Bourn and Tant* v. *Salmon and Gluckstein, Ltd.* (1906), 70 J. P. 462, affirmed on appeal ([1907] 1 Ch. 616; 71 J. P. 329) on the ground of the particular circumstances of the case, and on the ground that the case was indistinguishable from *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd*, *supra*). In *Elliott* v. *Russell*, [1902] 2 K. B. 748; 67 J. P. 158, a Divisional Court held that a rent for water supplied under agreement made under s. 56, *ante*, p. 129, was a "rate made under this Act" within the meaning of s. 256, *post*, p. 564. In *Northampton Corporation* v. *Ellen*, [1904] 1 K. B. 299; 68 J. P. 197, the Court of Appeal held that a water rate was not a "rate" within the meaning of an order extending the boundaries of the borough, Article 36 whereof provided that the general district rate to be levied in the added part should not in any one year during a period of ten years exceed such an amount in the pound as, "when added to the poor rate and to the borough rate and any other rate made by the corporation" in the same year, would make up a total rate of 5*s.* 6*d.* in the pound.

Cost of water for trade purposes.

Under a covenant by a lessor to pay all water rate imposed or assessed upon the premises or on the lessor or lessee in respect thereof, the lessor is not bound to pay for water supplied to the lessee for trade purposes (*Re Floyd*, *Floyd* v. *Lyons & Co.*, [1897] 1 Ch. 633); so too a lessor's covenant in the case of a lock-up shop to pay all rates and taxes except gas and electric light was held to include water rate for water supplied for domestic purposes, but not the rate for water supplied for trade purposes (*Drieselman* v. *Winstanley* (1909), 53 Sol. J. 631).

227. Any limit imposed on or in respect of any rate by any local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

Section 227. —— Limit in local Act not to apply to rate for purposes of this Act.

It was held that the corresponding section in 35 & 36 Vict. c. 79, s. 43, did not affect exemptions from assessment under a local Act (*Walton Improvement Commissioners* v. *Walford* (1875), L. R. 10 Q. B. 180; 39 J. P. 183).

A local Act provided that no borough rate levied thereafter should exceed in any year the sum of 1*s.* in the £, provided that with the consent of a majority of the persons liable to be rated thereto, the corporation might increase such rate above that amount. It further provided that no such increase should be leviable upon the owner or occupier of any coal mine in respect thereof, or upon any person assessable in the proportion of one-fourth only of any rate, other than the highway rate, in respect of his property or of premises occupied by him:—*Held*, that this was not an exemption of property from liability, but a limit imposed on the borough rate leviable upon colliery and certain other property; that though the limit still existed so far as any rate leviable by the corporation for borough purposes was concerned, the provision in the text prevented its applying to rates leviable by the corporation for the purposes of this Act, and that the corporation were unrestricted in the amount of any rate leviable by them thereunder (*St. Helen's (Corporation of)* v. *St. Helen's Colliery Co.* (1883), 48 J. P. 39). A provision in a local Waterworks Act that the rates should not exceed so much in the pound was held to be superseded by the corresponding section of the Public Health (Ireland) Act, 1878 (*R.* v. *Wexford (Corporation of)* (1886), 18 L. R. Ir. 119). Where a local Act enacted that the amount of the improvement rates made thereunder without the consent of the ratepayers should not exceed 4*s.* in the £, or with their consent 5*s.*, provided that in respect of so much of any rate which might be made without such consent as exceeded 2*s.* 6*d.* in the £, or with such consent 3*s.* 6*d.*, the occupier of any land used as a canal, towing-path, or railway should be assessed in the proportion of one-fourth part only of the net annual value thereof, it was held that, although the 4*s.* and 5*s.* limit was taken away by the text, the exemption of canal and railway owners was not affected (*Bingley U. D. C.* v. *Midland Rail. Co.* (1899), 80 L. T. 725). See also *Hill* v. *Crediton U. D. C.*, and *Ross U. D. C.* v. *Daniels*, *ante*, p. 471.

Rates for purposes outside this Act.

The text extends only to rates levied for defraying expenses incurred in the execution of this Act. It does not extend to rates including other purposes. In *Manly* v. *Young*, [1896] 2 I. R. 126, a rate, exceeding 2*s.* in the £, was made by town commissioners acting under a special Act. They were also the sanitary authority for the township, not only for strictly sanitary purposes, but also for all the purposes of the special Act, which provided that the township rate should not exceed in any year the sum of 2*s.* in the £, without the consent of two-thirds of the ratepayers at a special meeting. This rate was made without such consent and was held invalid notwithstanding the provisions of the corresponding section of the P. H. (Ireland) A., 1878.

228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching repairing lighting and cleansing, under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

Quota of rates to be paid by the universities, etc.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act (*a*).

Section 228. All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities halls and colleges in the same manner in all respects as rates contributions and sums of money may now be recovered from them by virtue of any such local Act.

(*a*) See s. 179, *ante*, p. 425. The Commissioners of Oxford and Cambridge have now been superseded by the respective corporations. See also the notes to s. 342, *post*, p. 667, and to the L. G. A., 1888, s. 52, *post*.

EXPENSES OF RURAL AUTHORITY.

Expenses of rural authority.

229. The expenses incurred (*a*) by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) (*b*) shall be the expenses of the establishment and officers of the rural authority (*c*), the expenses in relation to disinfection, the providing conveyance for infected persons and all other expenses not determined by this Act (*d*) or by order of the Local Government Board (*e*) to be special expenses.

Special expenses shall be the expenses of the construction maintenance and cleansing of sewers in any contributory place (*f*) within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act (*g*), the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board (*h*) to be special expenses.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion (*i*) the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers (*j*) of any contributory place, if aggrieved by any such apportionment (*k*), may, within twenty-one days after notice (*l*) has been given to them of the apportionment, send or deliver a memorial (*m*) to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned (*n*).

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district (*o*) according to the rateable value of each contributory place in manner in this Act mentioned.

Special expenses shall be a separate charge on each contributory place. **Section 229.**

The following areas situated in a rural district shall be contributory places for the purposes of this Act; that is to say,

(1) Every parish (*p*) not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts (*q*) or of this Act, or of an urban district; and

(2) Every such special drainage district as aforesaid (*q*); and

(3) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid (*r*).

(*a*) "Expenses incurred" in the corresponding section of the Irish statute has been held to mean actual or estimated expenses (*R.* v. *L. G. B.*, [1906] 2 I. R. 206).

Under the L. G. A., 1894, s. 29, the expenses of a rural district council are, subject to the provisions of that Act, to be defrayed in manner directed by the P. H. A., 1875. Highway expenses must be defrayed as general expenses, though a rural district council may, under certain circumstances, charge a contributory place with the cost of maintaining its own highways. See the section and notes thereto, *post*.

(*b*) These are such expenses as are made recoverable from owners of premises, for example under, ss. 23, 98, 150, and similar sections. Expenses chargeable on owners.

(*c*) The expenses of the establishment and *officers* of a rural authority are chargeable as general expenses, and the L. G. B. were given no power under this Act to declare such expenses, or part thereof, to be special expenses. This provision does not apply, however, to the remuneration of *servants*, which is properly chargeable in the same manner as the other expenses connected with the works upon which they are engaged. Thus, the workmen employed at the waterworks or in flushing the sewers in a rural parish may properly be paid out of the special expenses rate as part of the expense of supplying water, and of maintaining sewers, and the wages of scavengers are similarly chargeable if the cost of scavenging work (under s. 42) has been declared "special." It is not always easy to draw a line between *officers* and *servants*, but it seems reasonable to hold that such employees as waterworks managers, superintendents of sewers, caretakers of cemeteries, etc., are not included within the former category for the purposes of this section. Sanitary officers.

See, however, the P. H. A., 1890, s. 49, *post*, which, when in force in a rural district, enables the M. of H., upon application, to declare *any* expenses to be special expenses. The Ministry are willing to entertain applications under this section relating to the remuneration of such officers as secretaries to parochial committees (see notes to s. 202), water rate collectors, and other officers solely engaged for the benefit of particular parishes, and also relating to special remuneration awarded to clerks and surveyors (see s. 190 and notes) in respect of extra work from which particular contributory places benefit, *e.g.*, the execution of a sewerage scheme.

Compensation payable to existing officers by a rural council under the L. G. A., 1894, s. 81 (7), *post*, is, under that sub-section, to be paid as general expenses.

(*d*) Expenses incurred by a rural council and allowed by the Light Railway Commissioners with reference to any application for an order authorising a light railway under the Light Railways Act, 1896, may under s. 16 of that Act be paid as general expenses. The next paragraph specifies the expenses which the Act determines to be special expenses. See also the Housing of the Working Classes Act, 1890, ss. 42 and 65, *post*, Vol. II. Highway expenses, etc.

Note to Section 229.

Where a rural authority obtained urban powers under the first paragraph of s. 161, *ante*, p. 364, it was held that their expenses in the execution of such powers were general expenses (*Lanc. and York. Rail. Co.* v. *Bolton Union*, *ante*, p. 366). Such orders usually, however, contain a provision that lighting expenses shall be special. See the notes to the section.

The plaintiff brought an action against a rural sanitary authority, to restrain them from fouling a stream, and in 1885 recovered judgment with costs. The costs were not taxed until 1890. In 1891, the costs not having been paid, the plaintiff sued out a writ of *elegit* under which an inquisition was taken, and the sheriff delivered in execution to the plaintiff certain lands which had been acquired by the defendants for the purpose of sewage works in the parish of N., a contributory place within their district, by means of money borrowed on the security of the separate rates of that parish. Upon motion by the defendants to set aside the writ of inquisition, it was held that the lands in question were held by the defendants on trust for the parish of N., and could only be taken in execution for judgment debts exclusively chargeable against that place; that the costs of the action were "general expenses" not chargeable against that place of the separate funds levied within it, but against the common fund of the district; and that the judgment could only be enforced against property which had been acquired by means of that common fund. It was also held that the writ and inquisition being regular, the motion to set them aside was wrong in form, but that under the circumstances the court would, in the exercise of its discretion, under the Judicature Act, 1873, s. 24 (5), stay all further proceedings under the writ and inquisition (*Jersey (Earl of)* v. *Uxbridge R. S. A.*, [1891] 3 Ch. 183).

Order of M. of H.

(*e*) As explained in note (*c*) above, the powers of the L. G. B. (now exercised by the M. of H.) for the issue of orders declaring to be "special" expenses which would otherwise fall upon the common fund of a rural district, were considerably enlarged by the P. H. A., 1890, s. 49. If a rural council desire an order in relation to certain expenses which under the former Act must be charged as general expenses, they should, unless Part III. of the Act of 1890 has been adopted, apply for an order making s. 49 of that Act operative. The application for a special expenses order must be then renewed.

See also the L. G. A., 1894, s. 29 (*b*), which enacted that when the L. G. B. declare any expenses to be special expenses they may further direct that such expenses shall be raised in like manner as general expenses instead of by a separate rate for special expenses. Such a direction would seem to be unnecessary when the special expenses of a contributory place are very small in amount (see first proviso to s. 230), but it is a useful provision in cases where the land in a contributory place ought to contribute in full to the expenses in question.

The M. of H. issue many orders annually under these provisions declaring expenses to be special. An order is only retrospective so far as the expenses have not appeared in closed and audited accounts, and it is usually worded so as to apply only to expenses which have been or will be legally incurred. An order cannot be issued for expenses which have been the subject of a sanction by the L. G. B. under the Local Authorities (Expenses) Act, 1887, for such a sanction does not legalise expenses. In many of the orders of the Board investing rural councils with urban powers a provision was inserted declaring the expenses to be special.

An order cannot be issued restricting the incidence of expenses to part only of a contributory place. But see a case decided under the corresponding section of the P. H. (Ireland) Act, 1878: *R.* v. *L. G. B.* (1915), 2 I. R. 55.

It will be observed that the M. of H. have no power to declare to be general any expenses expressly declared to be special. See also the following notes.

Retrospective rate for special expenses.

(*f*) Between 1874 and 1879 some parishes in the W. union were sewered. Cheques were drawn from time to time for the expenses, and were paid out of the common fund, being entered in the ledger as "incidental expenses." In 1879 the sums so paid amounted to £831, and this balance was carried forward each half-year until 1883 and passed the auditor. In 1883 this £831 was apportioned as special expenses amongst the parishes concerned, the share of parish B. being £280. This sum of £280 was carried forward as due from B. each half-year till at length a rate was made on B. for the sum under s. 230, *post*, p. 514. S. appealed against the rate as being bad on the ground of retrospectiveness, and it was held that it was bad for this reason (*Saul* v. *Wigton Rural Sanitary Authority* (1886), 51 J. P. 406), and see note (*l*) to s. 230, *post*, p. 517. But see *Caistor Union* v. *North Kelsey (Overseers of* (1890),

59 L. J. M. C. 102; 62 L. T. 731; *R.* v. *Leigh R. D. C.*, *ante*, p. 476, and *Croydon Corporation* v. *Croydon R. D. C.*, *ante*, p. 477. **Note to Section 229.**

The L. G. B. always held that if expenses are incurred by a rural council in the preparation of a scheme of sewerage or of water supply, and the same is not carried out for any reason, such expenses are chargeable as general expenses in the absence of an order declaring them to be special; and, further, that such an order should only be issued under special circumstances, as, for instance, when the plans first prepared have been useful in connection with another scheme which has been carried out. There must be an exception to this rule, however, when a rural council have borrowed money with the Board's sanction for experimental works of water supply, which prove unsuccessful. The loan in this case must continue to be borne by the contributory place. Cost of abortive schemes.

The section does not include the expenses of disposing of sewage among those which are to be special, although they are usually so considered (being allied to sewerage expenses) when the question is raised by the district auditor or otherwise an Order is issued for the purpose. Expenses of sewage disposal.

(*g*) See s. 57, *ante*, p. 131, with respect to the levying and recovery of water rates. It is to be observed that when the supply has been provided, water rates or rents are to be obtained, and so far as the amount so obtained is deficient to meet the charges on the authority for such supply, a precept for special expenses must be issued. See also the Public Health (Water) Act, 1878, *post*. Expenses of providing a water supply.

The expenses of opposing a Bill in Parliament are not chargeable as special expenses without an Order. Expenses of a Provisional Order for land purchase (see s. 298) also require an Order before they can be charged to the contributory place benefited.

It has been held that repairing a public well was work for which a rural authority might issue a precept for special expenses (*Witney* v. *Wycombe Union* (1876), 40 J. P. 149).

Where a rural council has, under s. 51, *ante*, p. 119, supplied water to part of a contributory place, the expenses both of supply and of maintenance must, so far as they cannot be defrayed by a reasonable water rate or water rent to be paid by the consumers, be raised as special expenses by a rate on the whole contributory place (*Horn* v. *Sleaford R. D. C.*, [1898] 2 Q. B. 358; 62 J. P. 502).

(*h*) See note (*e*), *supra*. This order is conclusive. See s. 295, *post*, p. 627. Such orders may, however, be varied or rescinded.

(*i*) Only the expenses of works which are chargeable as special expenses, and which will be of common benefit to two or more contributory places, are to be apportioned. Thus, in the case of a joint sewerage scheme for two parishes the rural council must charge the cost of all internal sewers to the parishes separately, and confine their apportionment to the cost of the outfall sewer, engineer's fee, and other items in the estimate which are in the interests of the whole area to be drained. This point is important, as any other course may lead to difficulties. If a loan is proposed in the case of a joint scheme, the M. of H. will require to be furnished, in addition to other particulars, with copies of the notices served upon the overseers of the respective parishes, endorsed with the dates of service, and a statement distinguishing the items in the estimate which represent works which will be of exclusive and of common benefit. Apportionment.

The Ministry do not advise as to the basis upon which an apportionment should be made, in view of the fact that they may be called upon to settle an appeal. The assessable value of the parishes is very frequently taken as a basis of division, but the section gives full discretion to the district council in the matter. It is well to bear in mind in framing notices of apportionment that the estimated cost of works may be exceeded, and that unless provision is made for this contingency further notices will be necessary.

When it is proposed to borrow money there is a difficulty in apportioning the cost of works upon a varying basis, such as rateable value in successive years. The loan must be divided, and each parish must be liable throughout the term for the sums required for repayment with interest. There have been several instances, however, in which the L. G. B. and M of H. have regarded as valid notices of apportionment which have made provision for a quinquennial readjustment of charges. Maintenance expenses can, of course, be apportioned from time to time as the council think just.

Note to Section 229.

A council who purchase water in bulk, and supply it to different parishes, making a profit in some and a loss in others, may not set off the losses against the profits for the purposes of assessment to income tax (*Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328; 76 J. P. 437).

Appeal against apportionment.

(*j*) Note that it is still the overseers who must appeal, not the parish council (see also note (*k*)). At first sight it would appear that the appeal must be made by both the overseers, or by all when there are more than two, but an appeal by a majority of them would probably be held sufficient; see *R.* v. *Warwickshire JJ.* (1837), 6 L. J. M. C. 113; 6 A. & E. 873. In a case where a memorial was addressed to the L. G. B. by an assistant overseer, the Board required a statement from the overseers that the appeal was forwarded by their instructions. In another case where one overseer only signed a letter of appeal, inquiry was made whether the other overseer concurred in it.

It is essential that a memorial of appeal should state the "grounds of complaint," and these grounds must be confined to the question of the apportionment. A memorial which merely alleges that a scheme is unnecessary, or is too costly, is not an appeal under the section; it is merely an objection to the execution of the work.

In the case of an apportionment between a special drainage district which is part of a parish and the contributory place comprising the remainder of that parish, there is, of course, only one set of overseers upon whom notices can be served. They can therefore appeal on behalf of either contributory place.

Whilst an appeal against an apportionment is under the M. of H.'s considera tion, justices need not issue a distress warrant against the overseers to compel them to pay a precept calling for the sum apportioned on the parish (*R.* v. *Fox* (1908), 72 J. P. 331; 99 L. T. 90). If in such circumstances a summons against the overseers is adjourned pending the decision, and new overseers come into office before the decision is given, a distress warrant cannot afterwards be issued against the overseers originally summoned who have gone out of office (*Plympton St. Mary R. D. C.* v. *Reynolds*, [1909] 1 K. B. 768; 73 J. P. 156). See also note (*i*), *supra*.

(*k*) See note (*i*) as to what is a proper apportionment. Before appealing, the overseers will probably lay the matter before the parish council, if there is one.

(*l*) See ss. 266, 267, *post*, p. 593, as to the authentication and service of this notice.

(*m*) See note (*j*) as to this memorial. It must be *received* by the Ministry within twenty-one days from the receipt of the notice of apportionment. A letter will suffice, if sufficiently signed. The usual course taken by the Ministry is to direct a local inquiry to be held by one of their engineering inspectors, combined with an inquiry into any proposed loan. If, however, the district council admit the unfairness of the apportionment there would seem to be no objection to their making an amended apportionment, and, if there is no appeal against this, the Ministry need make no order.

(*n*) See also s. 295, *post*, p. 627. It is to be noticed that no appeal is given against the order of the Ministry in this matter.

(*o*) See following section and notes thereto. See also *Clark* v. *Rochford R. D. C.* (1897), 13 T. L. R. 371.

(*p*) See the definition in s. 4, *ante*, p. 5.

Special drainage districts.

(*q*) Such districts, if in existence in 1875, were formed under 29 & 30 Vict. c. 90, ss. 5, 7; 30 & 31 Vict. c. 113, ss. 7, 9; or 33 & 34 Vict. c. 53, ss. 3, 4. See also s. 277 of the present Act, and notes thereto.

(*r*) Such contributory places have now become separate parishes. See the L. G. A., 1894, s. 36.

Mode of raising contributions in rural district.

230. For the purpose of obtaining payment from the several contributory places (*a*) within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to some person appointed by them (*b*), care being

taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses (*c*).

Where a contributory place is part of a parish as defined by this Act (*d*), the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish (*e*) the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate (*f*) in the same manner as if it were a rate for the relief of the poor, with this exception ; (namely,)

That the owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance (*g*), shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value (*h*) thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property : (*i*)

Provided that where the amount required by any precept or precepts (*k*) from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses.

A separate rate under this section shall, as respects the powers of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof (*l*) except the purposes to which it is applicable, and such exemption as aforesaid (*m*), and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor ; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish (*n*).

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time (*o*) levy such increase of rate from

Section 230. the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate (*p*), or by a separate rate to be assessed made allowed (*q*) published collected and levied in the same manner as a poor rate (*r*). The officers ordinarily employed in the collection (*s*) of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate (*t*) such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made; and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority (*u*).

(*a*) See the last section.

(*b*) This should be the treasurer of the rural authority.

(*c*) It is desirable, as far as possible, to include all in one document with a view to saving labour and expense. But the sums must be kept distinct. See *Jersey (Earl of)* v. *Uxbridge R. S. A.*, *ante*, p. 512.

(*d*) See definition in s. 4, *ante*, p. 5, and notes (*q*) and (*r*) to s. 229.

Part of parish.

(*e*) Contributory places may, under s. 277 (or corresponding provisions in previous Acts), consist of parts of two or more parishes. In that case it seems that the overseers of the parishes respectively will be the overseers of the respective parts for the purpose of raising these expenses.

"Separate rate."

(*f*) By the L. G. A., 1894, s. 29, *post*, when the M. of H. determine any expenses under that Act to be special expenses, and a separate charge on any contributory place, and such expenses would, if not separately chargeable on a contributory place, be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in this section. See also note (*e*) to s. 229, and *cf.* the provisions of the Housing, Town Planning, etc. Act, 1909, s. 31 (1), *post*, Vol. II.

Exemptions.

(*g*) These are the same exemptions as are contained in s. 211, *ante*, p. 478, and the notes on that section should be referred to. The exemption was extended to orchards by 53 & 54 Vict. c. 17, *post*, and to allotments by 54 & 55 Vict. c. 33, *post*. Having regard to the exemption, the Agricultural Rates Act, 1896, and the Tithe Rentcharge (Rates) Act, 1899, do not apply.

An auditor surcharged overseers in respect of a portion of a separate rate for special expenses not collected by them. It appeared that in the valuation list in force at the time the rate was made, certain property was shown as an undivided assessment under the heading "Buildings and other hereditaments not being agricultural land." It was contended by the owner that under s. 230 he was entitled to an abatement on account of a portion of the property, and the overseers accepted as payment in respect of this portion a sum representing only one-fourth of the rate, The auditor stated that no appeal has been made to the assessment committee against the assessment or for its division, and he assigned as one of his reasons for the surcharge that the overseers had no power to divide an assessment fixed by the committee without obtaining the approval of the committee thereto. The L. G. B., on appeal, expressed the opinion that if the case was one in which as regards a portion of the

property the ratepayer was entitled to the partial exemption provided for by s. 230 of the Act, it was competent to the overseers in making out the rate to divide the assessment into two parts, and to make the rate in respect of each portion in accordance with the provisions of the section. The rate, however, having once been duly made, reduction of the rate on the property could (the Board considered) legally be made only in pursuance of a decision of a competent authority upon an appeal against the rate, and as the reduction represented by the sum in question was not so made, the Board confirmed the auditor's decision. They, however, exercised their powers of remission and remitted the surcharge. **Note to Section 230.**

(*h*) In the former section the term is *net annual value*, defined in s. 4, *ante*, p. 15, under the word *rack-rent*. There is no definition in the Act of *rateable value*, but the two phrases have the same meaning, being, in fact, convertible terms. "Rateable value."

A Provisional Order of the L. G. B. confirmed by a local Act provided that the expenses incurred by a joint board should be defrayed out of a common fund to be contributed by the component districts in manner provided by s. 283, *post*, p. 618, and that the contributions of certain of the component districts should be contributed and raised as if they were required to defray "special expenses" within the meaning of this Act. It was held (on a special case) that the joint board should apportion the contributions of the component districts according to the rateable values of the properties in such districts, to be ascertained according to the valuation list, and that the rateable value of tithe, tithe commutation rent-charges, land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, or covered with water, or used as a canal or towing-path, or as a railway, should be taken at the full value appearing in the valuation list, and not at one-fourth thereof (*Darenth Main Valley Sewerage Board* v. *Dartford Union* (1887), 19 Q. B. D. 270).

(*i*) This refers to the poor rate. There is great difficulty in dealing with a hereditament consisting of house and land where the valuation list does not sever the values of each. Where a valuation has been made under the Union Assessment Committee Act, 1862, the valuer ought, according to 27 & 28 Vict. c. 39, s. 4, to show the particulars of his valuation, and the respective values of such particulars. Where this has been done the separate values of the house and land can be obtained.

(*k*) These plural words appear to contemplate that several precepts may be issued so as to be outstanding at the same time. Nevertheless, if the whole of the sum required be of the limited amount stated in the text, no special rate can be made. Where this proviso is acted on and no separate rate is made the exceptions as to rating at one-fourth only of the rateable value do not apply (*Sheffield (Mayor, etc. of)* v. *Bradfield Union Assessment Committee* (1891), 7 T. L. R. 571). Several precepts.

The precept should not under any circumstances *direct* these expenses to be paid out of the poor rate.

The L. G. B. expressed the following opinion as to the meaning of this proviso: Section 230 of the Act of 1875, as amended by the Public Health (Rating of Orchards) Act, 1890, and the Allotments Rating Exemption Act, 1891, provides that the overseers shall comply with the requisitions of a precept for special expenses by raising the contribution required by the levy of a separate rate in the same manner as if it were a rate for the relief of the poor, with certain exceptions for rating special classes of property at a reduced amount. Where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds or is so small that a rate of less than one penny in the pound would be required to raise the same, it is provided that the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses, that is, out of the poor rate. *The Board consider that the effect of this provision is that payment out of the poor rate of a contribution for special expenses is only to be made where the amount is less than* £10, *or is so small that a rate less than one penny in the pound upon the rateable value as estimated for the purposes of a separate rate would be required to raise the same.* Precepts for small amounts.

(*l*) A question has been asked whether the term *incidents* includes the reductions allowed by the Poor Rate Assessment and Collection Act, 1869. The word was found in 30 & 31 Vict. c. 113, which was passed before that Act, and it might there- "Incidents."

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fore appear that the provisions of the Act of 1869 did not apply. On the other hand, there seems to be no reason why an *incident* of the poor rate should not apply to a rate made under this section, even although such incident has been created since the passing of the Act in which it was first used. See hereon *R.* v. *Lambert* (1854), 2 C. L. R. 883. A rate made under this section must not be retrospective. See *Saul* v. *Wigton R. S. A.*, on p. 512, *ante*; but see *Easton* v. *Nar Valley Drainage Commissioners* (1892), 8 T. L. R. 649; *R.* v. *Leigh R. D. C.*, *ante*, p. 476; and *Croydon Corporation* v. *Croydon R. D. C.*, *ante*, p. 477.

(*m*) That is, the reduction in the amount of the assessable value. The P. H. A., 1872, s. 18, referring to 30 & 31 Vict. c. 113, described these allowances as exemptions.

(*n*) See note (*g*), *supra*.

"From time to time."

(*o*) The words "from time to time" ought not to be so construed as to throw upon the ratepayers for one year what ought to have been borne by their predecessors. See *per* BLACKBURN, J., in *Market Harborough and Brampton Turnpike Trustees* v. *Kettering Highway Board* (1873), L. R. 8 Q. B. 308; 37 J. P. 551.

(*p*) It is difficult to see how this can be carried out, except by including the amount in the ordinary estimate for that rate.

Allowance necessary.

(*q*) This separate rate must be allowed by the justices, though the separate rate in the previous part of the section is free from that requisition.

(*r*) The exemption previously referred to (*m*) is not referred to here. *Quære* whether it can be implied? If not, it seems that the Agricultural Rates Act, 1896, and the Tithe Rentcharge (Rates) Act, 1899, will apply.

Rate collectors to collect.

(*s*) Note it is the collector who is to be employed, not an assistant overseer who is not engaged in the collection. The officers referred to cannot, it appears, decline to collect the rate if required to do so, but they are to be remunerated, and can compel the overseers to remunerate them.

At an audit of overseers' accounts the auditor disallowed a sum paid to a person, who was not assistant overseer, for his services in making and collecting a separate rate levied to meet special expenses of a rural district council. He assigned as his reasons that the person had not been duly appointed assistant overseer, and that he, not being the officer legally employed in the collection of the poor rate, the provisions of s. 230, as to remuneration for collecting a separate rate, did not apply; that the sum was not a legal charge upon the proceeds of a separate rate, and there was no authority enabling the overseers to charge the same in their accounts. On an appeal to the L. G. B. against the auditor's decision, the Board stated that they concurred in the opinion of the auditor that there was no legal authority for charging the sum in question, and accordingly they confirmed the disallowance with remission however.

Remuneration.

(*t*) These words supplied a defect in the P. H. A., 1872, s. 18, which omitted to declare whence the remuneration was to come. Care must be taken to ascertain whether the securities given by the officers will apply to this collection. In parishes with a parish council, the power of the vestry under this enactment has passed to the parish council. See the L. G. A., 1894, s. 6 (1) (a). In parishes without a parish council, the power has passed to the parish meeting (*ibid.* s. 19 (4)).

(*u*) Unless the authority appoint the succeeding overseers to receive it, the surplus must not be paid to them. In default of any order of the authority, it must be paid to their treasurer, to be applied, however, as in the text mentioned.

Remedy for non-payment by overseers of amount required by precept of rural authority.

231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof.

Procedure for recovery.

As to the provisions for recovery, see 2 & 3 Vict. c. 84, s. 1; 12 & 13 Vict. c. 103, s. 7; and 14 & 15 Vict. c. 105, s. 9. Where the district of a rural council extends

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into several petty sessional divisions, the justices of the county sitting in any of those divisions have jurisdiction to hear a complaint preferred by the council against overseers who are overseers of a parish situate in another division, and are resident in that other division, for neglecting to pay a contribution required by a precept of the council (*Caistor R. D. C.* v. *Taylor* (1907), 71 J. P. 310).

The procedure is as follows: Application is made under the hand of the chairman of the council for a summons to show cause. At the hearing of the summons if cause is not shown the justices issue their warrant for the amount in arrear and costs, which is levied upon the overseers as in the case of a warrant for poor rates.

A Divisional Court held that a sufficient remedy is given by this section if overseers fail to raise the money required, and that an authority whose precept had not been obeyed were not entitled to a *mandamus* (*R.* v. *Bermondsey Borough Council* (1908), 72 J. P. 330; 99 L. T. 14). In a later case it was pointed out by a divisional court that in the *Bermondsey Case*, first, it was sought on behalf of the guardians to compel by *mandamus* the immediate raising of a balance of a capital sum of £65,000, which would usually be raised, and which the borough were of opinion ought under the circumstances then existing to be raised by annual sums over a period of years. Secondly, there was a dispute as to the liability for the sum of £20,000 which the court held could be more conveniently decided if the alternative remedy were adopted. The court also stated that there must be strong reasons which were present in the *Bermondsey Case* to induce the court to refuse *mandamus* and leave the parties to an alternative remedy of distress in a case like that then under consideration. When the case now being referred to reached the Court of Appeal it was held that the alternative remedy was inadequate and the appeal from the making of a rule absolute for a *mandamus* was dismissed (*R.* v. *Poplar Borough Council* (No. 1), [1922] 1 K. B. 72). It might therefore be that under some circumstances a district council might be entitled to a *mandamus*. In the *Poplar Case* further points arose as to the enforcing of the *mandamus* the overseers there being the borough council and not individuals; see *R.* v. *Poplar Borough Council* (No. 2), [1922] 1 K. B. 95, but in a rural district where the overseers are individuals these points cannot arise.

Defences available.

The overseers of B. paid to the guardians of T. union contributions on the basis of a valuation list afterwards found by arbitration to be excessive. On the overseers refusing to pay the amount of two later precepts on the ground that they had already paid too much under the incorrect valuation list, and were entitled to be credited with the surplus, the guardians applied to justices for a distress warrant to enforce their precepts. The justices refused. On a case stated, it was held that the justices had a discretion as to granting the warrant and had exercised it properly; it was held also that the overseers were entitled to be credited on the later precepts with the amounts previously overpaid under the incorrect list (*Tynemouth Union (Guardians of)* v. *Backworth (Overseers of)* (1888), 57 L. J. M. C. 53; 52 J. P. 357). See also a decision of petty sessions at 72 J. P. N. 496.

Though the amount of the precept cannot be disputed, it is probably open to the overseers to dispute the validity of the precept itself before the justices. See *Newbould* v. *Coltman* (1851), 6 Ex. 189; 15 J. P. 372; *Pedley* v. *Davis* (1861), 30 L. J. C. P. 374; 26 J. P. 343; *Waddington* v. *City of London Union* (1858), 28 L. J. M. C. 113; 22 J. P. 367, 703, 755; *Witney* v. *Wycombe Union*, *ante*, p. 513. But the justices have not an arbitrary discretion to grant or withhold process (*R.* v. *Boteler* (1864), 4 B. & S. 959; 28 J. P. 453). In *Read* v. *Punter* (1898), 14 T. L. R. 455, a precept had been issued for the payment of special expenses incurred in repairing a footway in the contributory place. Materials and labour had been supplied by a member of the district council, and the amount paid to him was disallowed by the auditor and surcharged on the councillors signing a cheque for it. It formed a very large part of the whole amount for which the precept was issued. The parties surcharged not having paid, proceedings were taken to enforce the precept, and the justices refused to issue a warrant. The High Court held that they were wrong. Objections on the face of the precept, or personal to the person against whom the rate was to be levied, or that the contributory place was outside the jurisdiction of the justices, might perhaps be considered, but objections to the purpose for which the money was to be expended ought not to be entertained.

A rural district council having incurred expenses for the common benefit of several parishes within their district, apportioned them between the parishes, and issued a

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precept to the overseers of one of the parishes to pay to them the contribution of that parish. The overseers appealed against the apportionment to the L. G. B., who held an inquiry; but before this could be held proceedings were taken by the council against the overseers to recover the amount of the precept. The justices adjourned the hearing pending the announcement of the Board's decision. It was held that they were entitled to take into consideration the fact that an appeal was pending, and were not bound to issue their distress warrant until such appeal had been determined (*R.* v. *Fox* (1908), 72 J. P. 331; 99 L. T. 90). The L. G. B. having affirmed the apportionment, the summons was restored for hearing, and the justices again refused to issue a warrant on the ground that in the interval there had been a change of overseers (one only of the old ones being reappointed):—*Held*, that they were right (*Plympton St. Mary R. D. C.* v. *Reynolds*, [1909] 1 K. B. 768; 73 J. P. 156). As to the issuing of precepts which will involve the levying of retrospective rates, reference may be made to *Croydon Corporation* v. *Croydon R. D. C.*, [1908] 1 Ch, 222; 2 Ch. 321; 72 J. P. 13, 369. By agreements between the plaintiffs and defendants, the drainage area of some parishes in the defendants' district was extended and connected with the general drainage system of the plaintiffs, and it was provided that the defendants should pay to the plaintiffs as yearly rent an amount calculated on the rateable value of all the property within such parishes liable to contribute to the rates for special expenses under the Sanitary Acts. As the result of a mutual mistake the defendants only paid to the plaintiffs the amount calculated on the houses in such parishes actually connected with and draining into the plaintiffs' general drainage system. In an action claiming judgment for the amount of the difference and for a *mandamus* to issue precepts for the levying of rates sufficient to cover the same, NEVILLE, J., held that the debt being ascertainable at the time when it originally became payable, though it was not properly ascertained through a mistake common to both parties, there must be judgment for the amount claimed; but that (the effect of *R.* v. *Leigh R. D. C.* (cited at p. 476, *ante*) being to give the court a discretion as to granting a *mandamus* to levy a retrospective rate) no relief should be granted to the plaintiffs by way of *mandamus* to issue precepts for the levying of rates to satisfy the amount of the claim, as the effect of the *mandamus* would be to throw on one set of ratepayers a burden which should have been borne by another set of ratepayers. On appeal the court granted a *mandamus* as to such portion of the plaintiffs' claim as accrued due in the year 1904—1905, because a demand for the right sum was made during that year and negotiations were entered into with respect thereto and continued until the action was commenced. As to the remainder of the claim, *i.e.*, the amount which accrued due during 1903—1904, the court held that they would not be justified in throwing upon the ratepayers of 1908 arrears which were not demanded until April, 1905.

In the last-mentioned case precepts had been previously issued, and the overseers of one parish had refused to levy a rate in order to meet them. In another parish a rate was levied, but on appeal to quarter sessions it was quashed on the ground that it was retrospective and illegal.

As to private improvement expenses.

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.

See ss. 213—215, *ante*, pp. 493—496. And see also the last paragraph of s. 234, *infra*. It seems that a private improvement rate made under this section is not a "rate" within the meaning of the Agricultural Rates Act, 1896, s. 9, or the Tithe Rentcharge (Rates) Act, 1899, because the proceeds are not applicable to *public* local purposes.

BORROWING POWERS (*a*).

Power to borrow on credit of rates.

233. Any local authority may, with the sanction of the Local Government Board (*b*), for the purpose of defraying any costs charges and expenses incurred (*c*) or to be incurred by them in the execution of the Sanitary Acts (*d*) or of this Act (*e*), or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow (*f*), and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate (*g*).

A rural authority may borrow or re-borrow (*f*) any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable (*h*), and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates (*i*).

Loans Acts.

(*a*) In connection with this part of the Act reference should be made to the following Acts, which are printed in App. I., *post*, Vol. II. in so far as they are not repealed or relate only to local matters: The Local Authorities Loans Act, 1875; various Public Works Loans Acts, viz., 38 & 39 Vict. c. 89; 39 & 40 Vict. c. 31; 41 & 42 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 48 & 49 Vict. c. 30 (as to Sinking Funds); 50 & 51 Vict. c. 16; 50 & 51 Vict. c. 37; 55 & 56 Vict. c. 61; 57 & 58 Vict. c. 11; 59 & 60 Vict. c. 42; 60 & 61 Vict. c. 51; 61 & 62 Vict. c. 54; 1 & 2 Geo. 5, c. 17; the Finance Acts, 1899, s. 8, and 1907, s. 10, and the Local Authorities (Financial Provisions) Act, 1921.

Borrowing by statutory bodies.

The existence of an express power of borrowing prevents any implication of other powers of borrowing (*R.* v. *Reed* (1880), 5 Q. B. D. 483; 44 J. P. 633; *Wenlock* (*Baroness*) v. *River Dee Company* (1887), 36 Ch. D. 674; *Att.-Gen.* v. *De Winton*, [1906] 2 Ch. 106; 70 J. P. 368). It is incumbent on any one who proposes to lend money to a local authority to ascertain what are its powers, for all persons dealing with such a body are presumed to know the nature and extent of its powers (*Macgregor* v. *Dover and Deal Rail. Co.* (1852), 18 Q. B. 618, 631; *Balfour* v. *Ernest* (1859), 5 C. B. (N.S.) 601; *Gloucester County Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.*, [1895] 1 Ch. 629; *Chaples* v. *Brunswick Building Society* (1881), 6 Q. B. D. 696, 712, 713).

A local authority cannot under the section in the text borrow without the previous sanction of the Ministry of Health. A loan without such sanction would be void (*In re Sheffield Permanent Building Society, Ex parte Watson* (1888), 21 Q. B. D. 301; 52 J. P. 742; *R.* v. *Reed, supra*; *Att.-Gen.* v. *De Winton, supra*; *Att.-Gen.* v. *Tottenham U. D. C., infra*; and *Att.-Gen.* v. *West Ham Corporation, infra*).

Overdrafts.

An overdraft is a loan (*Cunliffe Brooks and Co.* v. *Blackburn and District Benefit Building Society* (1884), 9 App. Cas. 857; *R.* v. *Reed, supra*; *Smith* v. *Southampton Corporation*, [1902] 2 K. B. 244; 67 J. P. 5; *Att.-Gen.* v. *De Winton*, [1906] 2 Ch. 106; 70 J. P. 368; *Att.-Gen.* v. *Tottenham U. D. C.* (1909), 73 J. P. 437; 8 L. G. R.

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95; *Att.-Gen.* v. *West Ham Corporation*, [1910] 2 Ch. 560; 74 J. P. 406). Overdrafts are therefore illegal unless the local authority hold a sanction by the M. of H. to the borrowing, and payments for interest on same are also illegal. See the provisions now made in the Local Authorities (Financial Provisions) Act, 1921, *post*, or the borrowing by overdraft with the sanction of the Ministry for the purposes of current expenditure.

Unauthorised loans.

Funds under the control of local authorities are held by them upon trusts in the nature of charitable trusts, and the court has jurisdiction to restrain an authority from misapplying such funds, or to order the restoration of funds which have been misapplied (see *Att.-Gen.* v. *Newcastle-upon-Tyne* (*Mayor, etc. of*) (1889), 23 Q. B. D., at p. 497; 54 J. P. 292; *Att.-Gen.* v. *De Winton*, *infra*; *Att.-Gen.* v. *Aspinall* (1838), 2 My. & Cr. 613, 618). This jurisdiction is not affected by the fact that there may be a remedy in respect of improper payments out of such funds in some other way, *e.g.*, by *certiorari*, or by appeal against a rate (*Tynemouth Corporation* v. *Att.-Gen.*, [1899] A. C. 293, 305; 63 J. P. 404; *Att.-Gen.* v. *De Winton*, [1906] 2 Ch. 106; 70 J. P. 368). If, therefore, a local authority has obtained a loan which is *ultra vires* and proposes to repay the same, or to pay interest thereon, any ratepayer may invoke the assistance of the Attorney-General and obtain an injunction forbidding the payments out of any of the public funds under its control. In *Att.-Gen.* v. *De Winton*, *supra*, the facts were as follows: A municipal corporation had exhausted their statutory borrowing powers and overdrawn their banking account, which was in the name of the defendant, the borough treasurer, who was also the manager of the bank where the borough funds were kept. They directed the bank to honour all cheques drawn on the treasurer, and the bank charged interest on the overdrafts. The treasurer, in his accounts with the borough, debited the borough with such interest and credited himself as manager of the bank therewith. His accounts were audited by the borough auditors, who passed them, and the borough council approved them as audited. It was held that the corporation were not necessary parties to an action brought by the Attorney-General against the treasurer in respect of the charges for interest; that the overdraft and payments of interest thereon were *ultra vires*; that the defendant could not debit the borough funds, nor credit himself with interest on the overdrafts; that the treasurer was in a fiduciary position towards the burgesses, and not merely a servant of the corporation; that the orders of the corporation were not available to him as a defence; and that the audit was not conclusive on the borough and the burgesses. In *Att.-Gen.* v. *Tottenham U. D. C.*, *supra*, the facts were as follows: The council having in 1903 obtained a sanction of the L. G. B. to a loan for the erection of municipal buildings, spent, beyond the amount of the loan, a further sum of £18,350, which was borrowed from its bankers by overdraft. In 1907 it applied to the L. G. B. for leave to borrow the amount thus overspent; but as to £4,910, a portion thereof, sanction was refused. In October, 1908, it proposed to levy a general district rate to enable it to pay the £4,910, but, in an action brought by the Attorney-General, it was restrained from doing so until trial. Before action it had paid a sum of £855 for interest on the overdraft, and it proposed to pay a further sum of £900 for interest. At the trial it was held that the loan of £4,910, not being sanctioned by the L. G. B., was illegal; that the council must be restrained from applying any part of the general district fund or rate or any other public fund or rate under its control in repayment of the said loan or any part thereof; that the council was not entitled to make any payment of interest upon money borrowed without the sanction of the L. G. B., whether such borrowing was by means of overdraft or otherwise; that the payment of the £855 was unlawful and ought to be disallowed by the auditor on auditing the council's accounts; and that the council must be perpetually restrained from making any further payments of interest upon money borrowed without the sanction of the L. G. B. or other statutory sanction, whether such borrowing should be by way of overdraft or otherwise. With reference to the declaration "that the payment of £855 (for interest on the loan) was unlawful and ought to be disallowed by the auditor on auditing the council's accounts," it should be mentioned that it was stated by the court "that the declaration was in no way to affect the power of the L. G. B. to remit such disallowed payment under any statute enabling them to do so." This qualification was put in at the instance of counsel for the defendants, who cited section 3 of the Local Authorities (Expenses) Act, 1887, which provides as follows: "Expenses paid by any local

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authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board." It is difficult to see how this section can afford protection when money has been illegally paid, for even in those cases where a local authority has realised that it is proposing to pay money illegally and has applied for sanction, the section only provides that the auditor shall not surcharge the amount. It does not make the payment a legal one, and therefore, probably, a sanction would be no defence to an action claiming restoration of the money. It is to be observed, moreover, that the Act only applies to a local authority whose accounts are subject to audit by a district auditor, and therefore it does not apply to the majority of municipal corporations as to whose illegal payments there is no corresponding statutory provision.

Whilst the last-mentioned case was standing for trial, the bank sued the council for the principal sum of £4,910, and asked in their statement of claim for a *mandamus* to the council to levy a rate. The bank based their claim on a right to be subrogated to the rights of creditors who had been paid with their money. The council were willing that the bank should have judgment, and did not argue the point, and judgment was obtained for the £4,910, but, in view of the Attorney-General's action, the bank did not at the trial ask for a *mandamus* (see *London and Provincial Bank* v. *Tottenham U. D. C.*, Times, April 5th, 1909).

Further questions of the greatest importance were decided in *Att.-Gen.* v. *West Ham Corporation*, [1910] 2 Ch. 560; 74 J. P. 406. It was there held that where a local authority have statutory borrowing powers for specific purposes, any moneys raised under such powers must be used for those specific purposes, and cannot be used for any general purposes of the local authority, and that it is therefore *ultra vires* for a local authority to borrow for general purposes from their bankers by way of overdraft on the security of their statutory borrowing powers for specific purposes; and, *semble*, the bankers may be liable in such circumstances to refund any interest they have received on such an overdraft. It was further held in this case that when a local authority have statutory power to borrow to such an amount as may from time to time be sanctioned, it is *ultra vires* the local authority to borrow from their bankers by way of continuous overdraft on the security of such power to an amount in excess or in anticipation of the sanctions they may obtain. The defendant corporation were by local Acts authorised to raise loans by creating and issuing corporation stock, and the statutory enactments provided for the establishment of a "loans fund" for the redemption and extinction of the stock, and directed that any moneys paid into the "loans fund," and not immediately required, should be invested in statutory securities. It was held that it was *ultra vires* the corporation to apply or set-off the amount standing to the credit of the "loans fund" in reduction of their general overdraft at their bankers. See also this case at an interlocutory stage, 74 J. P. 196.

Mode of exercising borrowing powers.

In *R.* v. *Locke*, [1910] 2 K. B. 201; 74 J. P. 238, it was held by the Divisional Court that the borrowing powers conferred upon an urban authority by the section in the text did not enable it to borrow money (for other than temporary purposes) without securing the repayment of the loan by a mortgage of the rates or fund on the credit of which the money was borrowed, and that, therefore, a payment of interest made on behalf of the authority upon money borrowed for a permanent purpose without security was illegal. On appeal, a further agreed statement of facts was before the court, and upon these further facts it was held that the interest had been paid on an old loan which was secured by a mortgage of the rates and had been transferred to the bank, to whom the interest had been paid, and that there had therefore been no new borrowing. It was held accordingly that the payment of interest was lawful, and on this ground the decision of the Divisional Court was reversed. No decision was given by the majority of the judges in the Court of Appeal on the point on which the case was decided by the court below, but KENNEDY, L.J., expressed the view that the section did not require the execution of a mortgage. See [1911] 1 K. B. 680.

Practice of the L. G. B.

(*b*) Applications to the Ministry of Health, successors of the L. G. B., for sanction to loans should be made by resolution of the authority, of which a certified copy should be forwarded by the clerk. If the application relates to the purchase of land, the clerk should state whether a provisional agreement has been entered into with the owner, and a plan of the land should be forwarded. If works are in question,

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plans and estimates will be required (on special forms supplied in the case of sewers, street improvements, or waterworks), and in every case particulars must be furnished as to the assessable value and existing debt of the district.

The further requirements of the Ministry are set out in notes to the sections of the Act which authorise the particular works.

A local inquiry is usually directed to be held by one of the Ministry's engineering or medical inspectors, at which any person interested can be present and give evidence.

For the provisions enacted to simplify the mode of giving sanctions, etc. during the recent war, see s. 12 of the Local Government (Emergency Provisions) Act, 1916.

Works should not be executed without sanction to loan.

Where an authority contemplate the purchase of land or the execution of works by means of borrowed moneys, the Ministry regard it as important that sanction to the loan should be obtained before the expenditure is incurred. They point out that if this course is not followed and they should subsequently find themselves, for any reason, unable to sanction the required loan, the authority would have to defray the expenditure out of current revenue.

When expenses have actually been defrayed before application is made for sanction to a loan, the Board require some evidence to rebut the presumption that it was not originally intended to defray the expenditure out of income. They rarely accord sanction when the expenditure has appeared in accounts which have been closed and audited.

In some cases of belated applications the Ministry have deducted from the proposed loan a sum representing the amount of principal which would have been repaid if application had been made more promptly, and have made a corresponding reduction in the period for repayment of the loan.

Superseded works.

Where an authority seek sanction to a loan for the execution of works to replace works the cost of which has been defrayed out of a loan not yet entirely repaid, the Ministry require to be furnished with information as to the amount of the loan of which the outstanding debt forms part, the date on which such loan was sanctioned, the original cost of the works to be superseded, and the approximate amount of the debt outstanding in respect of such works. The reason is to be found in the practice of the Ministry of making a deduction from the proposed loan in respect of outstanding debt on works which are to be superseded. The Ministry explain that the principle upon which they act in such cases is that there should not be any outstanding debt upon works which have ceased to exist or to be of use. This object might, of course, be attained by the immediate repayment out of revenue of the sum outstanding on the superseded works, but, as the terms upon which the original borrowing was effected would in many cases preclude this, the Ministry endeavour to secure the same result by a deduction of this sum from the new loan. They point out, however, that such deduction is not intended to debar the authority from expending the amount deducted; they merely stipulate that, whatever the new scheme may cost, this amount shall be provided out of revenue.

Municipal trading.

Upon an application for sanction to a loan for the provision of a refuse destructor, the proposed works including plant for making mortar out of the products of the destructor, the L. G. B. stated that, pending the decision of Parliament on the general question of municipal trading, it would be contrary to their practice to sanction a loan for plant of this kind except on the condition that the authority would not manufacture material for sale, but would only sell such surplus products of the plant as they could not themselves use. Upon receipt of a copy of the resolution of the district council undertaking to observe this condition the loan was sanctioned.

Loans for highway purposes in rural districts.

The L. G. A., 1894, s. 29, provides that the expenses incurred by a rural district council shall, subject to the provisions of that Act, be defrayed in manner directed by the P. H. A., 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions of the Public Health Acts with respect to those expenses shall apply accordingly. Any loans required by a rural district council for highway purposes should therefore be raised under the provisions of the Act of 1875, and with the sanction of the Ministry. The result would seem to be (though this view is not universally accepted) that s. 47 of the Highway Act, 1864, which enabled highway boards to borrow with the consent of quarter sessions, is practically superseded.

Note to Section 233.

The Ministry hold that a district council have no general power under this Act of providing dwelling accommodation for their own workmen unless the provision of dwellings is reasonably necessary for the purposes of an undertaking—for example, for the management of a sewage farm. They have entertained a number of applications recently for the borrowing of money by rural district councils for the provision of roadmen's cottages, in view doubtless of the scarcity of accommodation in rural localities. The powers of district councils for the provision of dwellings under the Housing Acts (*see* Vol. II.) are, of course, quite distinct.

Dwellings for workmen.

If works are to be executed on leasehold land the term of the loan cannot exceed that of the lease. So, too, if a right to take water from springs can only be secured for a short term of years, the period of the loan required for mains will be similarly curtailed. If, however, in the latter case it could be shown that most of the works would not be rendered useless upon the loss of the particular springs, *i.e.*, if water could be obtained from some other source, the normal term might possibly be granted.

Works on leasehold land, etc.

A town council accepted tenders for the supply of materials in connection with their electric light undertaking, and arranged for payment therefor by instalments, with interest. This course was preferred to the payment of the cost out of borrowed moneys, in view of the economies expected to be effected by the new works, which were considered to justify the expense being charged to revenue. The attention of the L. G. B. was directed to the course of procedure proposed, and they communicated with the council. In the result the Board stated that it appeared to them that the proposed contract involved an expenditure for interest in respect of the deferred payment for which they were not aware of any authority in the absence of a proper loan sanctioned by them and secured by mortgage of the rates. The transaction, in so far as it involved expenditure in respect of interest on the deferred payment, seemed to the Board to be in the nature of a loan or an advance by the vendors of the materials to the council on terms agreed upon between them, one of the conditions of such advance being the payment of interest at the rate specified. The Board referred to *R.* v. *St. Michael's, Southampton* (1856), 6 El. & Bl. 807; 25 L. J. Q. B. 379, where a debt due to a contractor (not, indeed, by a local authority), in somewhat similar circumstances, was regarded as being a loan by the contractor. And, as regards cases in which local authorities are concerned, and in which their arrangements with contractors involve forbearance or delay for the benefit of the authorities in the matter of obtaining payment of money for goods supplied or work done, they stated that there would appear to be good ground for contending that the outstanding amount is essentially an advance (*Heilzmann* v. *Gavenlock* (1891), 7 T. L. R. 611). They further stated that in view of the reasoning of the judgment in *R.* v. *Reed*, *ante*, p. 521, it must be taken that the power of a corporation established for certain specified purposes will, except so far as express powers are given to it, be only such as are necessary for the purpose of enabling it to discharge in a reasonable and proper way the duties with which it is entrusted. It could not, in the Board's view, be contended that an implied power to defer payments and charge interest otherwise than by means of a loan on a properly executed mortgage of the rates, was necessary to enable the council to give lawful effect to their intentions in the particular instance in a reasonable and proper way, and consequently such an implied power could not be assumed to exist. Looking to the decision in the case above referred to, the Board were unable to say that they regarded the course contemplated as free from all legal objection.

Payment by instalments regarded as borrowing.

See also as to security given to a creditor being a "borrowing," *Bank of England* v. *Anderson* (1837), 3 Bing. New Cases, 589.

In the case of the purchase of steam rollers, fire engines, etc. by local authorities upon the instalment system, the Board invariably stated that such a procedure was not one recognised by the P. H. A., 1875, and that the proper course, when it was proposed to spread a payment over a term of years was to obtain the Board's sanction to a loan for the whole amount of the purchase-money. The M. of H. probably hold the same views.

There are many instances in which capital expenditure on a particular purpose is of a continuous character (such as the laying of gas and water mains to keep pace with a growing district), and under such circumstances it is difficult to furnish plans and full particulars. To meet these cases the Ministry consider applications for

Loans for prospective expenditure.

Note to Section 233.

sanction to loans for prospective expenditure without requiring details beforehand. The loan may be of such an amount as will be sufficient to defray anticipated expenditure on a particular purpose during an ensuing period of not more than three years. At the end of this period particulars will be required of the works upon which the money has been spent.

No payments to officers or permanent workmen out of loan moneys.

See note (*e*) to s. 189, *ante*, p. 459, as to payments out of loan moneys to officers and to workmen permanently employed by the authority.

With regard to payments to workmen the department was once asked whether the restriction applied to workmen who leave a council's employment at the commencement of a summer season and engage in occupations peculiar to the district. The reply was that the question whether a workman is or is not in the permanent employment of a council depends upon whether he is specially engaged to carry out a particular work and is discharged on the completion of that work, or is retained in the employment of the council irrespective of any particular works.

Procuration fees.

(*c*) The guardians of a union being authorised to raise £6,000 by loan, advertised for tenders and received six, and accepted one from an agent offering the sum at a certain interest and charge for commission. The guardians paid by cheque £50 commission. The auditor disallowed £38 10*s.*, part of the commission, and surcharged one of the guardians with that sum as having been illegally paid. It was held that the auditor was wrong, as there was no rule against paying a commission if in the circumstances the terms were the most advantageous to the ratepayers (*R.* v. *Haslehurst* (1886), 51 J. P. 645). A fee payable to a financial agent for introducing a district council to a lender must, therefore, be regarded as legal, being part of the cost of raising the loan.

Sanitary Acts.

(*d*) See the definition in s. 4, *ante*, p. 35. This section does not apply, unless it is specially incorporated (as it sometimes is), to works executed or to be executed under any local Act, though for sanitary purposes.

Local Acts.

Some recent cases have, however, shown a disposition by the M. of H. to permit the use of the borrowing powers of this Act to supplement those of a local Act when the purposes are such as are contemplated by the general Act. The notes to ss. 175, 176 may be referred to. The precise terms of the local Act have to be considered.

Amending Acts.

(*e*) With this Act must now be read the amending Acts, *e.g.*, the Public Health (Water) Act, 1878, the Public Health (Interments) Act, 1879, and the other Acts which are to be construed as one with this Act, and which are all set out *post*.

Re-borrowing.

(*f*) The re-borrowing should be deferred until sanction has been obtained. In a recent Annual Report the L. G. B. stated as follows: "A difficulty arose in a Leigh case in which the rural district council proposed to re-borrow a sum of £2,250. This sum represented at one time the outstanding balance of a loan of £2,500, but when application was made to us for sanction to re-borrow, the whole had in fact been discharged by means of moneys taken from the common fund of the rural district, the intention of the council being to recoup this fund by means of a new loan as soon as our sanction could be obtained. The difficulty arose, however, that there no longer existed any purpose for which a re-borrowing could be properly effected, and consequently no sanction to re-borrow could effectively be given. We have drawn particular attention to this case as we have reason to believe that all local authorities are not alive to the difficulty which results from a failure to observe that s. 233 of the P. H. A., 1875, contemplates sanction to re-borrow for the discharge of existing loans and does not admit of such sanction where the loans have been discharged."

When the same lender agrees to renew the loan for a further period within the maximum allowed by the sanction, at the same rate of interest, and upon the same conditions of repayment as are stipulated in the original mortgage, or in cases where the money is to be obtained from another lender by a transfer of the original mortgage without an alteration of the rate of interest or the conditions as to repayment, sanction is unnecessary.

The L. G. B. once stated that they were not aware of any legal objection to the payment of a bonus to the lenders of money in consideration of the lenders accepting immediate repayment of the amount outstanding, assuming that the arrangement was beneficial to the ratepayers.

Security.

(*g*) For the most part the subject to be charged is some rate or fund derived from

rates. Municipal corporations in some cases have corporate property, and, perhaps, that can be charged for some of the purposes of this Act. In s. 235, *post*, p. 532, it will be seen that the land obtained for purposes of sewage disposal may be mortgaged. Where an urban authority have adopted the P. H. A., 1890, s. 52, they may, with the consent of the L. G. B., raise loans by the issue of stock.

Note to Section 233.

As to whether a mortgage of a district fund and rates creates any charge on surplus lands of the local authority, which should under s. 175, *ante*, p. 412, be sold, see *In re Thomson, Bedford* v. *Teal* (1890), 45 Ch. D. 161.

(*h*) See s. 229, *ante*, p. 510.

(*i*) Thus, for sewerage or water supply, the separate rate for special expenses may be charged, and for private improvements the private improvement rate is to be charged. One result of this is that property purchased out of money borrowed on the credit of a separate rate cannot be taken in execution for a debt properly payable out of general expenses (*Jersey (Earl of)* v. *Uxbridge R. S. A.*, [1891] 3 Ch. 183).

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations ; (namely,)

Regulations as to exercise of borrowing powers.

(1) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years) (*a*) :

(2) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts (*b*) and this Act, in the whole the assessable value for two years (*c*) of the premises assessable within the district in respect of which such money may be borrowed :

(3) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry (*d*) and reported to the said Board :

(4) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board (*e*), determine in each case (*f*) ; and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual (*g*) instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities (*h*), such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned :

(5) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established (*i*) : Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied :

Section 234.

(6) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board; and shall in no case be extended beyond the period of sixty years (*j*) from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses (*k*), or expenses in respect of which they have determined a part only of the district to be liable (*l*). it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can (*m*), the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

See also notes to s. 233.

What are "permanent works."

(*a*) Although the M. of H. have power under the Act, by sanctioning a loan, to place *any* works in the category of permanent works, the Ministry and their predecessors have always adopted the ordinary acceptation of the term, and refused to permit money to be borrowed for any purpose unless benefit would accrue to the ratepayers for some considerable term of years. There are, of course, many degrees of permanency, and accordingly a scale of periods is acted upon, ranging from five to sixty years, for the repayment of loans sanctioned by the Department: see note (*e*) for further particulars on this subject.

In some cases it is difficult to form an opinion whether a work involving a considerable expenditure will be of permanent benefit to the district or not, as, for example, the work of boring and carrying out the necessary pumping tests in connection with a new waterworks scheme. In cases of this kind the Ministry express willingness to sanction a loan for a term of five years, on the understanding that if the works are successful the term will be extended by sanctioning a re-borrowing of the amount then owing.

See now, however, s. 3 of the Local Authorities (Financial Provisions) Act, 1921 (*post*), as to the borrowing of money for the purpose of providing for current expenditure by loan or overdraft.

Modification of plans.

Money borrowed for the execution of approved schemes must be applied in carrying out those works. If any material modification or deviation becomes desirable, the Ministry should be consulted.

Unexpended balances.

It is only in case of loans advanced by the Public Works Loans Commissioners (see the Public Works Loans Act, 1881, s. 9) that the Ministry are empowered to give their consent to application of loan moneys to purposes other than those for which they were borrowed. In other cases the balances should be returned to the lenders if they can be required or are willing to receive them; if not, the balances should be invested, and treated as a sinking fund, from which proportionate sums should be applied each year in meeting the instalments of principal and interest due on the loans of which they form part. See also notes to s. 243. Where, however, the new proposal is in the nature of a mere modification of the original scheme rather than a suggested diversion of funds to a different purpose the department is said to sometimes give its assent.

(*b*) See the definition in s. 4, *ante*, p. 35. Observe that the restriction is applied to indebtedness under the general Sanitary Acts only.

"Assessable value for two years."

(*c*) The term "assessable value for two years" is a little ambiguous; but it is construed as meaning twice the assessable value at any given time.

The term "assessable value" in s. 234 means (in the case of an urban district) the assessable value for the purposes of a general district rate, and the property referred to in s. 211 (1) (*b*) must therefore be reckoned on the reduced estimate of one-fourth. With regard to the reduction of assessments under the proviso to s. 211 (1) (*a*), where owners are rated instead of occupiers, the L. G. B. held the opinion that, as such reduction is at the option of the authority, the authority are not under any legal

obligation to take it into account in arriving at the assessable value of the district. **Note to Section 234.**

A similar view holds with regard to rural districts where a special expenses rate takes the place of a general district rate (see s. 230). Presumably a rural council can only borrow up to twice the assessable value of a contributory place for purposes of special expenses. Whether they have an additional and distinct borrowing power up to twice the assessable value of the district for purposes of general expenses (*e.g.*, offices, hospitals, highways, etc.) is not clear.

Several later Acts such as the Small Dwellings Acquisition Act, 1899, provide that the loans raised thereunder shall not count towards this limitation of borrowing. See also s. 6 of the Local Authorities (Financial Provisions) Act, 1921, as to loans for "unemployed" purposes and current expenses.

(*d*) See s. 293, *post*, p. 626, as to these inquiries. "Local inquiry."

(*e*) The M. of H. pay regard almost exclusively to the character of the works. The following are examples of the terms prescribed for repayment in sanctions to loans for various purposes: Periods allowed for repayment.

60 years	- -	Land (freehold).
30 „	- -	Buildings (of brick or stone), sewers, water mains, reservoirs, bridges, underground conveniences.
20 „	- -	Walls, sea defence works, granite paving, new road construction.
15 „	- -	Furniture of buildings, refuse destructors, machinery.
10 „	- -	Fire engines, road rollers, iron urinals, lamp columns, carts, hard-wood paving.
5 „	- -	Gravel footways, horses and harness, soft-wood paving and macadam.

In the case of loans under the Housing Acts the maximum period has now been extended to eighty years. See the Housing of the Working Classes Act, 1903, s. 1 (1), and the Housing, Town Planning, etc. Act, 1909, s. 3 (b), Vol. II., *post*. After the expiration of the prescribed period, the local authority will have no power to make a rate for the purpose of paying any part of the money borrowed. See *R.* v. *All Saints, Wigan (Churchwardens of)* (1876), 1 App. Cas. 611; 41 J. P. 132.

(*f*) As to loans borrowed under previous Sanitary Acts, see s. 321, *post*, p. 654.

(*g*) The provision as to annual instalments does not prohibit a loan from being repaid by equal annual instalments of principal or of principal and interest combined defrayed by means of half-yearly payments.

(*h*) These limits of investment were extended by the Trust Investment Act, 1889, s. 7, which enacted that where any urban or rural sanitary authority are authorised or required to invest any money for the purpose of a loans fund or a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities in which trustees are authorised by this Act to invest, except that such authority shall not by virtue of this section invest in any stocks, funds, shares, or securities, issued or created by themselves, nor in real or heritable securities: Provided that it shall not be lawful for any such authority to retain any securities which are liable to be redeemed at a fixed time at par or at any other fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption. Limits of investment.

For the investments authorised by the above Act are now substituted the investments authorised by the Trustee Act, 1893, s. 1, which enacts that a trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:

(a) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom:

(b) On real or heritable securities in Great Britain or Ireland:

(c) In the stock of the Bank of England or the Bank of Ireland:

(d) In India three-and-a-half per cent. stock and India three per cent. stock, or in any other capital stock which may at any time hereafter be issued

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by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India:

(e) In any securities the interest of which is for the time being guaranteed by Parliament:

(f) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District:

(g) In the debenture or rent-charge or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock: [See, hereon, *In re Tattersall, Topham* v. *Armitage*, [1906] 2 Ch. 399; 70 J. P. 537.]

(h) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (g), either alone or jointly with any other railway company:

(i) In the debenture stock of any railway company in India, the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(j) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub or Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity class D., and annuities comprised in the register of annuitants class C. of the East Indian Railway Company:

(k) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed:

(l) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by royal charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock: [By the Metropolis Water Act, 1902, s. 17 (4), water stock created under that Act is included amongst securities in which a trustee may invest.]

(m) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order: [The census returns for 1901 gave the population of B. as 47,003. A footnote stated that, since the date of the actual census, the borough had been extended so as to include some extra parishes, adding: "The figures at the date of the census were as follows—Bournemouth, C.B. 59,762." It was held that B. was a borough "having, according to the returns of the last census," a population exceeding 50,000 (*In re Druitt, Druitt* v. *Dehler*, [1903] 1 Ch. 446; 67 J. P. 99).]

(n) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioner shall not have exceeded eighty per centum of the amount authorised by law to be levied:

(o) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court [as to this see R. S. C. Order XXII. r. 17]:

and may also from time to time vary any such investment.

This section has been extended by 9 & 10 Geo. 5, c. 99, s. 9, to include local bonds

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issued under that Act and certain mortgages of funds or rates. See the Act, *post*, Vol. II.

Section 2 of the same Act provides that:—"(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value. (2) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (g), (i), (k), (l), and (m) of section one, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate. (3) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act."

Under the Colonial Stock Act, 1900, s. 2, trustees can also invest in colonial stocks registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 to 1900, and with respect to which there have been observed such conditions (if any) as the Treasury may by Order notified in the London Gazette prescribe.

Sinking fund investment and application of.

A local Act enacted that the municipal council of B. might from time to time borrow at interest any sum which, together with any previous loan, should not exceed £150,000, on the credit of the rates authorised to be raised by that Act, and directed that the council should appropriate out of the annual rates a proportion upon the amount borrowed, and should apply the same either to the gradual extinction of the debt, or to the formation of a fund to be accumulated for its discharge; and that it should be lawful for the council to invest the fund to be so accumulated in the public stocks or in Government or real securities. The council appropriated a yearly sum, and permitted it to accumulate as a sinking fund; but instead of investing the amount in any of the securities specified, they directed the borough treasurer to place it upon loan in a private bank of which he was director, and on behalf of which he claimed a lien on the sum as against an advance made to the council on some overdrawn accounts. It was held that it was the duty of the council, as they had not paid off any portion of the debt, to have formed a sinking fund in the manner and for the purpose mentioned in the Act; and the treasurer and the other members of the corporation were ordered to make good the amount with interest and to invest it in stock, and transfer the same to the credit of the cause (*Att.-Gen.* v. *Mayor, etc. of Belfast* (1855), 4 Ir. Ch. Rep. (N.S.) 119).

The corporation of L. on issuing debenture stock entered into an indenture with certain trustees, whereby, for the better securing and providing for the redemption of the stock, they created a fund by setting aside a certain sum half-yearly to be invested in the trustees' names as the corporation should think fit, with full power to them to vary the investments: the income of such investments was to be accumulated, and the fund so created was to be applied by the corporation in or towards the redemption of the stock after it should have become redeemable. The half-yearly sums were duly invested in the names of the trustees. The Crown claimed to be entitled, under the Customs and Inland Revenue Act, 1885, s. 11, to corporation duty on the income of the fund so invested:—*Held*, that corporation duty was payable inasmuch as, although by arrangement the fund was invested in the names of trustees who received the money, the fund, nevertheless, belonged, and the income accrued, to the corporation within s. 11 (*Att.-Gen.* v. *City of London Corporation*, [1913] 2 K. B. 497).

(*i*) But what if they apply it to any other purpose? The legislature did not in this Act give the L. G. B. the power of supervision over this sinking fund, which, for some time, had been introduced in local Acts, where borrowing powers were conferred upon sanitary authorities. Doubtless, reliance was placed upon the action of the auditor, who is required to see that the requirements of the law are duly executed. Moreover, as the Central Department require particulars of the financial condition of a district to be supplied in the case of each fresh proposal to borrow, a considerable amount of control is obtained and exercised. It would appear from cases such as *R.* v. *St. Michael's, Pembroke* (1836), 5 A. & E. 603; 6 L. J. K. B. 28; and *R.* v. *St. Michael's, Southampton* (1856), 6 El. & Bl. 807; 25 L. J. Q. B.

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379, that the authority might be compelled by *mandamus* to set aside moneys to satisfy the requirements of this section.

A local authority having obtained sanction to a loan under the present Act was desirous of deferring the establishment of a sinking fund for its repayment for a few years until the works were completed and in working order. The L. G. B. considered such an arrangement of very doubtful legality as the law then stood and refused to assent to it. Such a power is, however, given in some local Acts.

The attention of the L. G. B. was drawn to the fact that an urban district council deposited the sums so set apart at the local bank. The Board drew the council's attention to the obligation imposed upon them by the statute, and expressed the view that the investments should be made as soon as possible after the sums are set aside, in order to avoid the possibility of any loss of interest.

See also as to the illegality of a temporary use of funds standing to the credit of a sinking fund, *Att.-Gen.* v. *West Ham Corporation*, [1910] 2 Ch. 560; 74 J. P. 406.

Under the Local Authorities (Financial Provisions) Act, 1921, s. 4, the Central Department may authorise the suspension of sinking fund payments, etc. while expenditure remains unremunerative.

(*j*) When a loan has once been raised there is no method of effecting an extension of the term even with the sanction of the M. of H, except by means of a re-borrowing.

Loan for private improvement expenses.

(*k*) See s. 213, *ante*, p. 493. The text appears to assume that the authority will borrow money and charge it upon their general district rate, though it is only required for special application and this may be usual. But see the second paragraph in s. 233, *ante*, p. 521.

(*l*) See s. 211 (4), *ante*, p. 479.

(*m*) This is an indefinite provision. It is doubtful whether any legal obligation can arise out of it.

Power to borrow on credit of sewage land and plant.

235. Where any local authority are possessed of any lands works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands works or other property, and may mortgage such lands works or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands works or other property so mortgaged (*a*). The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act (*b*); but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase-money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section (*c*).

(*a*) The powers of this section are sometimes useful to local authorities when they have exhausted their borrowing powers under ss. 233, 234 of the Act. They cannot mortgage any land other than that used for sewerage purposes.

As to a mortgage of land under this section being an interest in land within the meaning of the earlier Mortmain Acts, *i.e.*, impure personalty, reference might be made to *Buckley* v. *Royal National Lifeboat Institution* (1889), 43 Ch. D. 27; *Re Yerbury's Estate, Ker* v. *Dent* (1889), 62 L. T. 55; *In re Thompson, Bedford* v. *Teal*, *ante*, p. 417; *In re Holmes* (1890), 60 L. J. Ch. 267; 63 L. T. 477; *In re Parker, Wignall* v. *Parker*, [1891] 1 Ch. 682; *In re Crossley, Birrell* v. *Greenhough*, [1897] 1 Ch. 928; 61 J. P. 390; *Re Pickard, Emsley* v. *Mitchell*, [1894] 3 Ch. 704. Impure

personalty may, however, now be given or disposed of by will for charitable purposes (see the Mortmain and Charitable Uses Act, 1891). **Note to Section 235.**

(*b*) The charge is to be upon the sewage property, and is thus in accordance with 35 & 36 Vict. c. 79, s. 41, but the money to be borrowed is not confined to sewage purposes. It may be applied to any purpose authorised by s. 234 of the Act. The property charged may have come into the possession of the local authority under s. 27, *ante*, p. 89.

The mortgage referred to is not limited as to time. It may or may not be made redeemable within a specified time, but apparently it will be open to the mortgagee, in default of express stipulation to the contrary, to require payment at any time, and in default of payment to foreclose.

The power hereby granted is free from the direct control of the M. of H. as their consent to its exercise is not required (but see note (*c*), *infra*).

The section imposes no limit on the amount which may be borrowed thereunder, but s. 234 provides that the total sums borrowed under ss. 233 and 234 shall not exceed two years' assessable value, and sums raised under s. 235 may only be disregarded when they do not exceed three-fourths of the purchase-money of the land.

(*c*) Although this section refers to the interest only, the authority may pay off the principal, if so minded, and the L. G. B. frequently brought pressure to bear on authorities to take this course. If not paid off out of rates, the principal can only be paid off out of profits or out of a fresh loan contracted under s. 233, *ante*, p. 521, with the consent of the Ministry of Health.

As to the position of a local authority, whose lands are mortgaged, in regard to income tax, reference may be made to *Att.-Gen.* v. *London C. C.*, [1907] A. C. 131; 71 J. P. 217. There the council were in receipt of an annual income derived from interest on loans and rents; they also possessed certain lands which they occupied themselves. They had from time to time borrowed large sums of money under statutory powers, and in respect thereof had created capital stock which, with the dividends thereon, was charged upon all their property, including the land occupied by them. The annual interest payable on that stock was in excess of the annual income received by them together with the annual value of the land occupied by them. The amount by which their income was insufficient to pay the interest upon the stock was raised by means of rates. The council, when paying dividends upon the stock, deducted income tax under Sched. (D). It was held that the council were not entitled to retain out of the income tax so deducted from the dividends such a sum as would recoup them the income tax which they had already paid under Sched. (A) in respect of the lands in their occupation. See also cases in notes to the P. H. A., 1890, s. 52, *post*.

236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect. Form of mortgage.

See Form H., which, however, is only the form of a mortgage of rates, not of the land or works referred to in the last section. Forms will also be found in Davidson's Conveyancing (ed., 1881), Vol. II., Part II., p. 649; Prideaux's Conveyancing (17th ed.), Vol. I., p. 624; and in the Encyclopædia of Forms and Precedents, Vol. VIII., at pp. 200—203. Mortgages made prior to 35 & 36 Vict. c. 79, were free from stamp duty, but since that Act there has been no exemption.

A mortgage (of rates) entered into before sanction is obtained to the loan will not be legalised by a subsequent sanction.

As to borrowing money to be secured by debentures, debenture stock, and annuity certificates, see the P. H. A., 1890, s. 52, *post*, and the Local Loans Act, 1875 (App. I., *post*, Vol. II.).

Where an officer of a local board fraudulently obtained money on a mortgage of rates to which he had affixed the seal of the board, the board were held not liable to repay the money, as the officer's fraud was for his own benefit, not for that of the

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board, as the negligence of the board in permitting him to have custody of the seal was not the proximate cause of the loss of the money, and as there was no evidence that the board had held out the officer as having authority to borrow money (*Crapp* v. *East Stonehouse L. B.* (1889), 5 T. L. R. 501).

Register of mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed (*a*). Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds (*b*).

(*a*) For a discussion as to the object of this provision, see *R.* v. *Locke*, p. 523, *ante*. *Semble*, omission to register, or any delay in registration, will not invalidate the creditor's claim.

(*b*) As to the recovery of this penalty, see s. 251, *post*, p. 551.

Transfer of mortgages.

238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Schedule IV. to this Act, or to the like effect (*a*).

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and descriptions of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee (*b*).

On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby (*c*).

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds (*d*).

Form of transfer.

(*a*) See Form I. in the Schedule. It would appear that in order to secure the stamp the consideration must be stated and stated truly, but whether the transfer would be avoided by an error or omission may be doubted.

Registration of transfer.

(*b*) The section does not prohibit registration after the specified period of thirty days, nor does it invalidate the transfer if not registered within the time (see *R.* v. *Locke*, p. 523, *ante*). But until registration the local authority are not bound to recognise the transfer. As regards the arrival in the United Kingdom of a transfer

executed abroad, there must necessarily be some doubt as to the time in many cases.

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(*c*) Where turnpike trustees who had power to mortgage their tolls, but not their toll houses, mortgaged both by deed, it was held that they could recover the toll houses from their mortgagees (*Fairtitle* v. *Gilbert* (1787), 2 T. R. 169; approved by LINDLEY, M.R., in *St. Mary, Islington* (*Vestry*) v. *Hornsey U. D. C.*, [1900] 1 Ch. 695; 82 L. T. 580). A board of commissioners empowered by their private Act to borrow money and issue debentures chargeable on their local rates, contracted with one of themselves that he should supply bricks for their works, and gave him debentures purporting to be for money advanced, and such debentures were duly transferred by him to bona fide holders for value. The supply of the bricks by him was contrary to the provisions of the Act. It was held that whatever might be the case as between him and the commissioners, they were estopped by the debentures from setting up the illegality as an answer to the demands of the transferees (*Webb* v. *Herne Bay* (*Commissioners of*) (1870), L. R. 5 Q. B. 642; 34 J. P. 629; and see *In re Romford Canal Co.* (1883), 24 Ch. D. 85).

Effect of transfer.

The decision in *Webb* v. *Herne Bay* (*Commissioners of*), *supra*, does not extend to securities issued by the local authority without sanction for the loan. It will be seen that the Local Loans Act, 1875, in App. I., *post*, Vol. II., provides a means whereby local securities may be granted with an indefeasible title.

Reference may here be made to the Acts for preserving purchasers of stock from losses by forged transfers (54 & 55 Vict. c. 43, and 55 & 56 Vict. c. 36, in App. I., *post*, Vol. II.), which may possibly apply to transfers under this section.

(*d*) See, as to the recovery of this penalty, s. 251, *post*, p. 551.

Penalty.

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction (*a*); and such court may, after hearing the parties (*b*), appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid (*c*).

Receiver may be appointed in certain cases.

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them (*d*):

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds (*e*), or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum (*f*).

(*a*) See the definition, *ante*, p. 36. In a case of money borrowed by a corporation under an Act containing no such provision as that in the text, the Court of Chancery refused of itself to appoint a collector of local rates (*Preston* v. *Yarmouth* (*Corporation of*) (1872), L. R. 7 Ch. 655).

As regards loans granted under previous Acts, s. 343, *post*, p. 668, preserves all rights under those Acts, and consequently a right to a receiver. As to the appointment of a receiver in case of default by a metropolitan local authority, see 11 & 12 Geo. 5, c. 67, s. 2.

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(*b*) Hence a summons must be issued to the authority in default.

The duties on appointments to offices were repealed by 38 & 39 Vict. c. 23, s. 14, and were not re-enacted by the Stamp Act, 1891.

(*c*) Note carefully what rates are to be collected by this receiver, as he will not have a general authority to collect all rates. This provision is ambiguous, as it does not clearly state whether the money is to be paid to all the mortgagees or to such only as have applied for the appointment of the receiver.

The statute does not enable the receiver to make the rate. The authority may be compelled by *mandamus* to make it.

(*d*) In practice the ordinary collector of the rates, if there be one, will pay over the rates to the receiver, unless, as may be the case, the collector is himself made the receiver.

(*e*) Perhaps the sum may be made up of principal and arrears of interest.

(*f*) Under 35 & 36 Vict. c. 79, s. 40, a mortgage might obtain a receiver to enforce payment of arrears of principal and interest, and there was no specified limit as to the debt; but that part of the section has not been re-enacted. When less than £1,000 is overdue it would appear that an action for a *mandamus* would lie to compel the authority to make a rate sufficient for the payment of the principal and interest in arrear, and to apply the rate accordingly (*Ward* v. *Lowndes* (1859), 28 L. J. Q. B. 265; *Drewry* v. *Barnes* (1826), 3 Russ. 94).

Rent-charge may be granted in respect of advances made for private improvements.

240. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses (*a*), the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. to this Act (*b*) to such person of a yearly rent-charge issuable out of the premises (*c*), in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rent-charge shall be personal estate (*d*), and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years (*e*), in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates (*f*), and with respect to redemption of private improvement rates (*g*), shall, mutatis mutandis, apply to rent-charges granted under this section.

(*a*) See s. 213, *ante*, p. 493.

Rent-charges.

Under this provision a stranger is entitled to acquire a rent-charge upon the land of another, but it is analogous to the enactments by which rents have been charged upon lands in commutation of tithes, except that there a right of action is given for the recovery of the rent. No right of action is expressly given by this section. See *Willoughby* v. *Willoughby* (1843), 4 Q. B. 687; *Bedford* v. *Sutton Coldfield* (1857), 3 C. B. (N.S.) 449; 27 L. J. C. P. 105. But since the case of *Thomas* v. *Sylvester* (1873), L. R. 8 Q. B. 368, it would probably be held that an action would lie. And see *Scottish Widows' Fund* v. *Craig* (1882), 20 Ch. D. 208; *Booth* v. *Smith* (1883) (No. 1), 47 J. P. 759; 51 L. T. 395; *Searle* v. *Cooke* (1890), 43 Ch. D. 519; *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129; *Re Herbage Rents, Greenwich*, [1896] 2 Ch. 811; *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317; *Cundiff* v. *Fitzsimmons*, [1911] 1 K. B. 513.

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21 & 22 Vict. c. 98, s. 58, gave a summary remedy for the recovery of these rent-charges, but this part of that section is not re-enacted, and the form does not contain in it a power of distress. Possibly the case may be considered to fall within s. 251, *post*, p. 551. As to the recovery of arrears of rent-charge after sale of part of the property subject to the charge, see *Booth* v. *Smith* (1884) (No. 2), 14 Q. B. D. 318. As to the remedy against the owner for the time being of part of the lands, see *Christie* v. *Barker* (1884), 53 L. J. Q. B. 537. As to the right of proof for arrears against a company in liquidation, see *Re Blackburn Benefit Building Society, Ex parte Graham* (1889), 42 Ch. D. 343. As to extinguishment by non-payment during the period of limitation, see *Jones* v. *Withers* (1896), 74 L. T. 572.

A similar provision is contained in the Housing of the Working Classes Act, 1890, s. 36, *post*, Vol. II.

(*b*) See Form K., *post*, p. 693. It is not now free from stamp duty; see 11 & 12 Vict. c. 63, s. 151; 35 & 36 Vict. c. 79, s. 42.

(*c*) If the premises charged be afterwards severed, the rent will continue a charge upon every portion. With reference to the difficulty arising out of such a state of circumstances, see *Bedford* v. *Sutton Coldfield, supra; Rivis* v. *Watson* (1839), 5 M. & W. 255; 9 L. J. Ex. 67. See also as to apportionment in case of eviction from part of the premises charged by title paramount, *Hartley* v. *Maddocks*, [1899] 2 Ch. 199.

(*d*) This provision affects the devolution of the property in the case of intestacy. See the observations of the judges in *Bligh* v. *Brent* (1837), 2 Y. & C. 268; *per* WOOD, V.-C., in *Hayter* v. *Tucker* (1858), 4 Kay & J., at p. 248; *Thompson* v. *Thompson* (1844), 1 Coll. 381; *Robinson* v. *Addison* (1840), 2 Beav. 515. See also the cases referred to in the notes to s. 235, *ante*, p. 532.

(*e*) It is somewhat uncertain when the rent is to commence, and the form in the schedule does not help further than to determine when the first payment shall be made.

(*f*) See s. 214, *ante*, p. 494.

(*g*) See s. 215, *ante*, p. 495.

Rent-charges to be registered.

241. Rent-charges issued in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act.

See ss. 237, 238, *ante*, p. 534, as to the default of registration with reference to other charges, and see *In re Wynn Hall Coal Co.* (1870), L. R. 10 Eq. 515.

Power of Public Works Loan Commissioners to lend to local authority.

242. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

This section appears to contain a general power to the commissioners to lend money at such rate of interest as appears to them to be satisfactory. The next section enables them to do so at a specific low rate of interest, but under certain restrictions.

The statutes which now govern the advances by the commissioners are mentioned in note (*a*) to s. 233, *ante*, p. 521, and are (except in so far as they are repealed or relate only to local matters) set out in App. I., *post*, Vol. II. Attention may be particularly directed to the Public Works Loans Act, 1875, s. 50, under which loans granted under the Public Health Acts are to be deemed loans under the Public Works Loans Acts.

As to the application of balances of loans advanced by the commissioners to purposes other than those originally intended, see the Public Works Loans Act, 1881, s. 9. It is the practice of the M. of H., when the final payments have been made by a local authority out of a loan advanced by the commissioners and any balance

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remains, to request that such balance should, in accordance with the provisions of the Public Works Loans Act, 1878, s. 4, be remitted as soon as practicable to the commissioners to be applied by them to the reduction of the debt.

Power of Public Works Loan Commissioners to lend to local authority on recommendation of Local Government Board.

243. The Public Works Loan Commissioners may, on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act (*a*), whether for works already executed (*b*) or yet to be executed, on the security of any fund or rate (*c*) applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest . . . (*d*) :

Provided—

(1) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required (*e*) :

(2) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872 (*f*).

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum (*g*).

This section is largely affected by the Public Works Loans Act, 1898. In a Circular dated October 15th, 1898, explanatory of the Act, the Local Government Board stated as follows :—Section 11 of the Public Works Loans Act, 1875, provided that every loan granted by the Public Works Loan Commissioners under that Act should be repaid within a period from the date of the actual advance of such loan not exceeding the period authorised by the special Act relating to the loan, or, if no period was so authorised, not exceeding twenty years. In the latter case, however, the Treasury might, on the recommendation of the commissioners, stating special circumstances, extend the period of repayment. By s. 5 of the Public Works Loans Act, 1898, *thirty* years are substituted for twenty in s. 11 of the Act of 1875. Hence, in the case of any sum borrowed by the council from the Public Works Loan Commissioners, the commissioners will be able to lend the money for a period not exceeding *thirty* years without any action on the part of the Treasury. No recommendation from the Board will be required in any such case; but a recommendation from them under s. 243 of the P. H. A., 1875, will still be necessary where the council propose to borrow from the commissioners for a longer period than thirty years for works executed under the Public Health Acts. The Board also understand that the commissioners consider that they can only lend money for the purposes of Part I. of the Housing of the Working Classes Act, 1890, when the loan is recommended under s. 25 (5) of that Act. Hence a recommendation from the Board will always be requisite, if the council propose to borrow from the commissioners for these purposes, whatever may be the period within which the loan is to be repaid.

With reference to the italicised words of the circular, *supra*, note that the limit of "thirty years" has been extended to "fifty years" by the Public Works Loans Act, 1911, s. 4. It is understood that the commissioners are unwilling to lend money for the repayment of an existing loan.

Local Act loans.

(*a*) Note that this section does not apply to loans which are authorised by a local Act, though for purposes such as would be provided for by this Act. But

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the Public Works Loans Act, 1896, s. 2, enacts that there shall be added to the works for the purpose of which the Public Works Loan Commissioners may lend in Great Britain under the Public Works Loans Act, 1875, the following works, namely (*inter alia*), any work for which the council of a county, borough, district, or parish are authorised to borrow.

(*b*) These words are evidently used with reference not to the date of this Act, but to the time when the loan is applied for.

(*c*) It is presumed that the fund and rate here referred to are the district fund and general district rate of the urban authority, and the common fund or separate rate for special expenses in the case of a rural authority. See also the next section.

Rate of interest.

(*d*) The provision which here followed as to the rate of interest, was repealed by the Public Works Loans Act, 1897, s. 12 (4). The rates of interest vary frequently now.

Period of repayment.

(*e*) See notes (*a*) and (*e*) to s. 234, *ante*, pp. 528, 529, as to terms allowed for loans.

Default expenses.

(*f*) The L. G. B., in fact, never did undertake works in default of a local authority nor do the M. of H. See s. 299, *post*, p. 632 and notes thereto.

Reduction of interest.

(*g*) The Public Works Loans Act, 1875, s. 33, provided that every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of that Act) or under the security for such loan, should be compounded for or released only under the authority of Parliament in each case. The amending Act of the following year, 39 & 40 Vict. c. 31, s. 6, after reciting that doubts had arisen whether the said enactment would prevent the reduction of interest in accordance with s. 243 of the P. H. A., 1875, provided that the commissioners might, on or before July 31st, 1876, if they thought it expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than four per centum per annum: Provided always, that nothing in the Public Works Loans Act, 1875, should be deemed to take away or abridge the power of the commissioners under s. 243 of the P. H. A., 1875, to reduce, if they thought fit, any interest payable on any such loan to a local authority as in that section mentioned.

The Public Works Loans Act, 1875, s. 36, required the L. G. B. to satisfy themselves that the money advanced by the commissioners is duly applied to the purpose of the loans—a duty now performed by the M. of H. *Ibid.*, s. 37, empowers the Treasury to postpone for periods, not exceeding five years, the payment of the instalments of principal and interest, due on loans from the Public Works Loan Commissioners. No such power exists in respect of loans from other bodies or private individuals.

Borrowing powers of joint boards and certain other authorities.

244. Joint boards and port sanitary authorities under this Act (*a*), and the local board of health of any main sewerage district (*b*) and any joint sewerage board (*c*) constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act or on the credit of sewage land and plant (*d*) as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act.

(*a*) See s. 279, *post*, p. 616, as to the formation of joint boards, and s. 287, *post*, p. 622, as to port sanitary authorities.

(*b*) Main sewerage districts were formed under 11 & 12 Vict. c. 63, s. 10, and were referred to in 35 & 36 Vict. c. 79, s. 58.

(*c*) See 28 & 29 Vict. c. 75, s. 9; 30 & 31 Vict. c. 113, s. 10; 35 & 36 Vict. c. 79, s. 26.

(*d*) See s. 235, *ante*, p. 532. Here, however, the purpose of the loan is necessarily limited to that for which the joint board is constituted.

Section 245.

AUDIT.

Audit of Accounts of Local Authorities.

Accounts of local authorities.

245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

The subject of "Accounts and Audit" is fully dealt with in Vol. I. of the Encyclopædia of Local Government Law, to which reference might be made.

By the L. G. A., 1894, s. 58 (1), *post*, the accounts of the receipts and payments of district councils and their committees and officers shall be made up yearly to March 31st, or, in the case of accounts which are required to be audited half-yearly (*e.g.*, the accounts of municipal corporations as urban sanitary authorities under s. 246, *infra*, and the accounts of rural district councils, their committees and officers under the L. G. A., 1894, s. 58 (2)), then half-yearly to September 30th and March 31st in each year, and in such form as the L. G. B. prescribe. This enactment practically supersedes the text.

In connection with this subject reference should be made to the District Auditors Act, 1879, in App. I., *post*, Vol. II. The L. G. B. under the powers conferred upon them by s. 245, *supra*, and the District Auditors Act, 1879, s. 5, issued a General Order, dated March 22nd, 1880, prescribing the accounts to be kept by a local board, and a similar Order dated March 8th, 1881, as to the accounts of improvement commissioners. Both bodies have, as previously explained, become urban district councils, and the above Orders are still applicable to the accounts of such councils. No Order prescribing the form of the accounts of rural district councils has as yet been issued. In a Circular Letter of December 24th, 1894, the L. G. B. stated that they thought the accounts should be kept in the form which had hitherto been adopted for the accounts of rural sanitary authorities.

See s. 206, *ante*, p. 469, as to the annual report.

The accounts of municipal corporations have in some instances been brought under district auditors by means of provisions in local Acts or in Orders under s. 303 of this Act. See note (*a*) to next section.

Audit where urban authority are a town council.

246. Where an urban authority are the council of a borough the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts (*a*).

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint (*b*). Any order of such authority for the payment of any money may be removed by certiorari, and like proceedings may be had thereon as under section forty-four of the Act of the first year of her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund (*c*).

Powers and duties of auditors.

(*a*) For the election and duties of borough auditors, see the Municipal Corporations Act, 1882, ss. 25—27, and s. 62. The borough treasurer is required to make up his accounts half-yearly, submit them to the auditors, and print a full abstract of his accounts for the year. The abstract is to be open to the inspection of ratepayers, who are also entitled to obtain copies at a reasonable price (s. 233 (4)).

Note to Section 246.

In a number of cases local Acts have provided for the audit of borough accounts by a district auditor instead of in the manner prescribed by s. 246.

A municipal corporation having represented to the M. of H. that the system of audit laid down in the Municipal Corporation Acts should be replaced in their borough by a Government audit, the Ministry replied that they had no power to accede to the application unless there was some local Act or Provisional Order which could be altered by Order under s. 303 of the P. H. A., 1875, so as to effect what was desired.

An Act confirming a Provisional Order under s. 54 of the L. G. A., 1888, for the extension of a borough may contain a provision on this subject. See the L. G. B. Provisional Orders Confirmation (No. 12) Act, 1912 (relating to Barnsley).

In the case of a new borough also the scheme of the Privy Council, if submitted to Parliament for confirmation, may be amended by Parliament so as to provide for a Government audit (Merthyr Tydfil being an example).

The following are boroughs in which Government audits are now held:—Aberystwith, Barnsley, Bournemouth, Chelmsford, Cheltenham, Christchurch, Dover, East Ham, Gravesend, Hastings, Ilkeston, Lancaster, Llanelly, Maidstone, Margate, Merthyr Tydfil, Monmouth, Newbury, Newcastle-under-Lyme, Plymouth, Pontefract, Poole, Reigate, Shrewsbury, Southampton, Southend-on-Sea, Swindon, Totnes, Tunbridge Wells, Warrington, and Weymouth.

Remuneration of auditors.

(*b*) Borough auditors are not entitled to any remuneration for their services in auditing the municipal accounts, but under this provision they must be paid for auditing the accounts of the council as the sanitary authority. Their duties in regard to these accounts are not confined to seeing that there are vouchers in respect of items for which the urban sanitary authority claims credit; they ought to make a reasonable examination to see that the payments made by such authority are authorised by the duty of the authority (*Thomas* v. *Mayor, etc. of Devonport*, [1900] 1 Q. B. 16; 63 J. P. 740). See also observations as to the duties of a borough auditor in *Stevenson* v. *Mayor, etc. of Bexhill* (1906), 70 J. P. N. 364, and *Att.-Gen.* v. *De Winton*, *infra*. The auditors may only claim in respect of such number of days as are properly occupied in the work (*Thomas* v. *Devonport*, *Stevenson* v. *Bexhill*, *supra*).

Orders for payment.

(*c*) 1 Vict. c. 78, s. 44, was repealed by the Municipal Corporations Act, 1882, which, by s. 141, provides as follows in lieu thereof: "An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk. Any such order may be removed into the Queen's Bench Division of the High Court by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court." And by s. 242 and Sched. IX., a reference to the new Act is to be deemed to be substituted for a reference to any Act amending the Municipal Corporations Act, 1835. With reference to the construction of the repealed statute, see *R.* v. *Lichfield* (1843), 4 Q. B. 893; *R.* v. *Greene* (1843), 4 Q. B. 646; *R.* v. *Dunn* (1844), 5 Q. B. 959; *R.* v. *Prest* (1851), 16 Q. B. 32; 14 J. P. 750; *Att.-Gen.* v. *Wigan* (*Mayor, etc. of*) (1854), 23 L. J. Ch. 429; 1 Kay, 268; *R.* v. *Sheffield* (*Mayor, etc. of*) (1871), L. R. 6 Q. B. 652; 36 J. P. 37; *R.* v. *Norwich* (*Mayor of*), *ante*, p. 405.

Although the section provides a special mode of testing the validity of orders of a borough council this is not the only mode of challenging orders which are illegal. The Attorney-General, at the relation of a party interested, may obtain an injunction to restrain the payment of money being made under an order of the council, for which there is no legal warrant (*Tynemouth* (*Mayor, etc. of*) v. *Att.-Gen.*, [1899] A. C. 293; 63 J. P. 104; *Att.-Gen.* v. *De Winton*, [1906] 2 Ch. 106; 70 J. P. 368). The fact that accounts have been audited is no bar to an action brought for the purpose of challenging illegal payments, for the Act does not make an audit finally binding and conclusive on the borough and the burgesses (*ibid.*, and *cf. Edinburgh Magistrates* v. *Edinburgh Distress Committee*, [1910] S. C. 153).

Reference should also be made to the Borough Funds Acts, 1872 and 1903, in App. I., *post*, Vol. II.

Audit where urban authority are not a

247. Where an urban authority are not the council of a borough the following regulations with respect to audit (*a*) shall be observed: (namely,)

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town council. [Repealed as to words in italics by 42 Vict. c. 6, s. 11.]

(1) The accounts of the receipts and expenditure under this Act of such authority (*b*) shall be audited and examined once (*c*) in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor (*d*) *for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:*

(2) *There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:*

(3) Before each audit such authority shall, after receiving from the auditor the requisite appointment (*e*), give at least fourteen days notice (*f*) of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever (*g*):

(4) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested (*h*) for seven clear days (*i*) before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books (*j*), or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds (*k*):

(5) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary (*l*), and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same (*m*); and if any such person neglects (*n*) or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings (*o*); and if he falsely or corruptly makes or signs any such declaration,

knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :

(6) Any ratepayer (*p*) or owner (*q*) of property in the district may be present at the audit, and may make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have (*r*) by law against disallowances :

(7) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payments (*s*) ; and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct (*s*) of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person ; and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made :

(8) Any person aggrieved by disallowance (*t*) made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor (*v*) ; and the said court shall have the same powers with respect to allowances disallowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors ; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances disallowances and surcharges by the said poor law auditors (*w*) :

(9) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision (*x*) ; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person (*y*) :

(10) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall

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publish an abstract of such accounts in some one or more of the local newspapers circulated in the district (*z*).

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act (*aa*).

(*a*) As to the audit of the accounts of rural authorities, see notes to next section.

Extra-ordinary audit.

There is no provision in the Act (as in the Poor Law Amendment Act, 1866, in the case of overseers, etc.) for holding an *extraordinary* audit of accounts.

"Such authority."

(*b*) These words did not apply to the officers of the authority. Officers were not mentioned in 21 & 22 Vict. c. 98, s. 60, but were provided for in 37 & 38 Vict. c. 89, s. 38, which is re-enacted in s. 250, *post*, p. 550.

"Once in every year."

(*c*) Thus it appears that the accounts of a borough council, in respect of this expenditure, will, at present, be audited twice every year, while those of other urban authorities will be audited only once. Moreover, the dates for the auditing of the accounts differ.

Repeal.

(*d*) The remainder of this and the whole of the following sub-section were repealed by the District Auditors Act, 1879. Section 5 of that Act provided that the L. G. B. should make the necessary regulations as to the audit of these accounts. As to an irregular appointment of an auditor, see *R.* v. *Dublin Town Clerk* (1906), 40 Ir. L. T. 241.

Appointment of audit.

(*e*) The auditor appoints the time for the audit.

"At least."

(*f*) The words "*at least*" have a technical meaning, and exclude both the first and the last day. See *R.* v. *Shropshire JJ.* (1838), 7 L. J. M. C. 56; 8 A. & E. 173.

Proof of notice.

(*g*) See 11 & 12 Vict. c. 91, s. 7, which contains a similar enactment in reference to the audit of union accounts. And see the L. G. A., 1894, s. 58 (3), *post*, which provides that the L. G. B. may make rules modifying the enactments as to publication of notice of the audit, and of the abstracts of accounts and of the report of the auditor.

"Persons interested."

(*h*) Who are the persons interested? 24 & 25 Vict. c 61, s. 15, which modified the 21 & 22 Vict. c. 98, s. 60, gave the right of inspection to *owners* and *ratepayers*; but this section has not been altogether re-enacted. In a former edition of this Work it was stated that the phrase "persons interested" might possibly include others than ratepayers or owners—for example, contractors, and a recent case shows that persons other than ratepayers or owners are so included. M., a member of an urban district council, and chairman of the finance committee, became disqualified for membership through being adjudicated bankrupt in April, 1901. He was not a ratepayer or property owner within the area of the authority; but while chairman he had signed cheques, and so was liable to be surcharged. In May, 1902, a copy of the accounts was deposited for inspection before the audit. M. was refused inspection, but it was held that, notwithstanding his bankruptcy, he was a person interested and entitled to inspect the accounts (*Marginson* v. *Tildsley* (1903), 67 J. P. 226; 1 L. G. R. 333). This decision was given in March, 1903, and in the meantime the audit had been held, commencing in May, 1902, and closing in December, 1902. M. attended the audit and saw the books. In July, 1903, he applied for inspection of the books and was refused, and in November, 1903, he moved for a *mandamus* to compel the clerk to allow him inspection. It was held that, no substantial reason having been put forward for seeing the books, the court would, in their discretion, refuse the *mandamus* (*R.* v. *Fleetwood U. D. C.* (1904), 68 J. P. 314; 2 L. G. R. 1209). It was held in *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708, that, where "a shareholder" was given a statutory right to demand copies of a certain book of the company, any inquiry as to the motives for his demand was irrelevant.

"Clear days."

(*i*) Both the day of the publication and the day of the audit must be excluded: see *Liffin* v. *Pitcher* (1842), 1 Dowl. (N.S.) 767; 6 Jur. 537).

Duty of officers.

(*j*) See also the provision in s. 196, *ante*, p. 462. And see the Orders of the L. G. B. already referred to as to the attendance of the officers of the authority at the audit.

(*k*) See as to the recovery of the penalty, s. 251, *post*, p. 551.

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(*l*) It is no answer to the demand of the auditor that the books relate to other matters as well as those under audit. He has a right to see them, in order that he may be satisfied whether or not they relate to the subjects of his audit. See *Williams* v. *Mayor, etc. of Manchester* (1897), 45 W. R. 412 ; 13 T. L. R. 299. Penalty. Production of books.

As to a *mandamus* to a town clerk to produce books which his council order him not to produce, see *R.* v. *Dublin Town Clerk* (1906), 41 Ir. L. T. 97.

(*m*) This is similar to 4 & 5 Will. 4, c. 76, s. 47, and 7 & 8 Vict. c. 101, s. 33. "Declaration."

(*n*) The word *wilful* is not inserted ; therefore any neglect will subject the person to a penalty. See *King* v. *Burrell* (1840), 9 L. J. Q. B. 337 ; 12 A. & E. 460 ; *King* v. *Share* (1842), 3 Q. B. 31 ; see also *Hughes* v. *Fry* (1907), 29 M. C. C. 17, where a penalty for neglect was imposed by justices. A mere failure to comply with the requirement of this section may amount to neglect. See *Ex parte Loughman* (1907), 52 S. J. 47. "Neglect."

(*o*) See the provisions as to the recovery of penalties in s. 251, *post*, p. 551, and refer to 7 & 8 Vict. c. 101, s. 33.

(*p*) There is no definition in the Act, except in reference to elections, of the term *ratepayer*. In this place it probably means every person assessed to the rate under audit.

The Act does not give to any persons other than ratepayers or owners the right of attending at an audit, or of making objections to the accounts, nor does the enactment expressly confer on the persons authorised the right of being represented by agents. It is believed, however, to be the practice of auditors to admit to the audit and receive objections from duly accredited agents of ratepayers or owners who are unable to attend in person.

(*q*) See the definition in s. 4, *ante*, p. 8.

(*r*) There was an inadvertence in 24 & 25 Vict, c. 61, s. 15, and it is re-enacted here. The ratepayer has no appeal against a disallowance ; he cannot be aggrieved thereby as a ratepayer. The passage should have run "*as is given*," and reference would then have been made to sub-s. (8). Appeal against disallowance.

(*s*) The law as to the limits of an auditor's power to surcharge is in a somewhat unsettled condition. In *Bayley* v. *Wilkinson* (1864), 10 Jur. (N.S.) 726, ERLE, C.J., made some observations upon his duties and powers, but they are by no means intelligible, and do not appear in the report of the same case in 16 C. B. (N.S.) 161. As to his duties in disallowing illegal payments, see *Barton* v. *Piggott* (1874), L. R. 10 Q. B. 86 ; 39 J. P. 454, from which it appears that he has no discretion as to disallowing a payment which is illegal. See, however, the Local Authorities (Expenses) Act, 1887, in App. I., *post*, Vol. II., which provides that payments made by an authority shall not be disallowed if they have been sanctioned by the L. G. B. Powers of surcharge.

In *R.* v. *Knott* (1866), 15 L. T. 291, it was said that he has power to surcharge for any deficiency that may on the face of the documents submitted to him appear to have risen through negligence or misconduct, and the court will not interfere with his surcharge where, on the face of the documents submitted to him, there is evidence from which he might reasonably have concluded that there had been such misconduct or negligence.

In an Irish case it was held that there is no power to surcharge a person not having a direct and immediate control over the funds out of which the illegal payment is made, and that therefore a surveyor could not be surcharged for giving a certificate without which an illegal payment to a contractor could not have been made (*R.* (*O'Leary*) v. *Calvert*, [1898] 2 I. R. 266). In *R.* v. *Carson-Roberts*, [1908] 1 K. B. 407 ; 72 J. P. 81, where it was held that for a council to accept a tender which is not the lowest is not of itself evidence of negligence or misconduct, COZENS-HARDY, M.R., and FARWELL, L.J., expressed the opinion, that an auditor is authorised and required by sub-s. (7) to decide whether any member or officer of the council has been guilty of negligence or misconduct in relation to the accounts whereby loss has been occasioned to the council, and to assess the amount of the loss. FLETCHER MOULTON, L.J., however, considered that the powers and duties of the auditor are strictly confined to auditing, and that the words "person accounting" in the latter part of the sub-section (which requires the auditor to "charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person") mean the person who brings in accounts for audit, and that therefore when the accounts submitted are those of the council

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the person accounting is the council, and the auditor has no power to inquire into the negligence or misconduct of the individual members or servants of the council.

An Irish rural council had erected labourers' cottages by means of a loan. Part of the district was created an urban district, and the "adjustment" award directed the cottages and future liability for the loan to be transferred to the urban council. The rural council's solicitor delayed making arrangements for the formal transfer, and in the interval that council paid off further instalments of the loan. The auditor having surcharged the councillors signing the cheques, the court reversed his decision, on the ground that the payments were not "unfounded" or "illegal." The court refused to decide whether in such a case the auditor had power to hold that the council or its members were or were not guilty of negligence as accounting persons. He had at any rate not so found (*R.* v. *Browne*, [1909] 2 I. R. 333). See also *R.* v. *Browne*, [1907] 2 I. R. 505, as to alleged improvidence in instructing a solicitor to do clerical work. As to the respective jurisdictions of auditor and taxing master, see *In re Porter*, p. 550, *post*.

Persons to be surcharged.

The persons signing or countersigning the cheque are the persons "making" the payment (*Lanark County Auditor* v. *Lambie* (1905), 7 F. 1049); but in England any member who "authorises" an illegal payment is also liable to be surcharged, and the ordinary practice is for the auditor to surcharge one or more of the persons who sign the cheque. It is open to him, however, to surcharge any person who votes for or otherwise concurs in the payment. *Cf. R.* v. *Fermanagh JJ.* (1910), 44 Ir. L. T. 188.

The responsibility incurred by persons who sign cheques laid before them only for conformity's sake, or in the supposed routine of business, is shown in the cases of *Land Credit Co. of Ireland* v. *Lord Fermoy* (1869), L. R. 8 Eq. 7; *Joint Stock Discount Co.* v. *Brown*, *ibid.*, at p. 404.

Appeal against surcharge.

An auditor usually supplies a person aggrieved by a disallowance or surcharge with a paper of instructions as to the mode of appealing to the M. of H. As to this see note (*w*).

As to the notices which the auditors must give to persons not present at the audit before surcharging such persons, see 11 & 12 Vict. c. 91, s. 8, in App. I., *post*, Vol. II., and see *R.* v. *Local Government Board* (1909), 73 J. P. 186; 100 L. T. 434, as to when orders of surcharge should be signed by the auditor.

If an auditor disallows items of account and surcharges them on the person making or authorising the payments, the court has power to review his decision, not only if it is erroneous in point of law, but also if it is wrong on the merits (*per* CAVE, J., in *R.* v. *Haslehurst* (1887), 51 J. P. 645; *per* PALLES, C.B., in *R.* (*O'Leary*) v. *Calvert*, [1898] 2 I. R. 266; *R.* v. *More O'Ferrall*, [1903] 2 I. R. 141; *R.* v. *Carson-Roberts*, *ante*, p. 545).

(*t*) See sub-s. (6), *ante*, and the note (*r*) thereto.

Conditions of *certiorari*.

(*v*) In App. I., *post*, Vol. II., are the provisions of the statutes which relate to the powers and proceedings of poor law auditors and the powers of the Poor Law Board (now the M. of H.) with reference to appeals arising out of the audit of poor law accounts. They are the following: 7 & 8 Vict. c. 101, ss. 32, 33, 35; 11 & 12 Vict. c. 91, ss. 4, 5, 7—10; 12 & 13 Vict. c. 103, ss. 8, 9, 11; 39 & 40 Vict. c. 61, s. 38. As to the matters open to the court on an application for a *certiorari*, see *R.* v. *Carson-Roberts*, *ante*, p. 545. The auditor if successful is not entitled to solicitor and client costs of the application for a *certiorari* (*Roberts* v. *Battersea Borough Council* (1914), 78 J. P. 265; 12 L. G. R. 898; 110 L. T. 566).

With reference to the taxation and audit of solicitor's bills, see s. 249, *post*, p. 549.

Powers of M. of H. on appeal.

(*w*) The Poor Law Board disposed of appeals made to them by correspondence between the parties interested, the auditor and themselves, but occasionally referred matters of fact to their inspectors, who could examine witnesses and parties on oath. They were empowered, when they upheld the auditor's decision, to remit the disallowance and surcharge when they found that the subject-matter was incurred under circumstances that made it fair and equitable that it should be remitted upon payment of the auditor's costs (11 & 12 Vict. c. 91, s. 4). 29 & 30 Vict. c. 113, s. 5, enabled them to declare their decision by a certificate signed by the president and countersigned by a secretary or assistant secretary. The M. of H. continue the same course of practice as that of the Poor Law Board. *Cf.* however, *R.* v.

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Local Government Board, Ex parte Arlidge (or *Arlidge* v. *Local Government Board*), on p. 598, *post*.

The printed "instructions" issued by the L. G. B. (see App. II., *post*, Vol. II.), explained that any person desiring to appeal, must, unless the auditor has already entered his reasons in the book of account in which the disallowance or surcharge was made, apply to him to enter his reasons in that book; and for this purpose the book should be submitted to him. When the auditor has entered his reasons, an exact copy of them and also a copy of his certificate of disallowance or surcharge, including his signature and the date of the entry, should be forwarded to the M. of H. with the appeal. The appeal should be by letter on foolscap paper, addressed to the Secretary of the M. of H., Whitehall, London, and must be signed by the appellant in his own handwriting. *Where two or more persons are mentioned in the auditor's certificate, the appeal should be signed by each of those desirous of appealing.* The appeal should contain a full statement of the facts which the appellant may desire to lay before the Ministry; and the grounds upon which the appeal is made should be explicitly set out. If there are any (1) cheques; (2) bills; (3) vouchers, or (4) other papers or documents bearing upon the matter, they should be forwarded to the Ministry with the appeal; and copies of any resolutions of the local authority with reference to the subject-matter of the expenditure, should also be sent.

The jurisdiction of the High Court to restrain improper payments out of the rates is not exercised so as to interfere with the powers of the Board under 11 & 12 Vict. c. 91, s. 4, or 50 & 51 Vict. c. 72, *post*, Vol. II. (*Att.-Gen.* v. *Merthyr Tydfil Union*, [1900] 1 Ch. 516; 64 J. P. 276; *Att.-Gen.* v. *Tottenham U. D. C.* (1909), 73 J. P. 437; 8 L. G. R. 95; *Att.-Gen.* v. *East Barnet Valley U. D. C.* (1911), 75 J. P. 484; 9 L. G. R. 913; and *cf. Att.-Gen.* v. *Rickmansworth U. D. C.*, in note (*y*) to s. 3 of the Local Authorities (Expenses) Act, 1887, *post*, Vol. II.

Stay of payment pending appeal.

(*x*) The appeal referred to is that given by the previous sub-section to the King's Bench Division or the M. of H. According to the ordinary construction the days are to be counted one day inclusive and the other exclusive.

7 & 8 Vict. c. 101, s. 32, requires payment in respect of poor law accounts to be made within *seven* days after the certificate. The S. J. A., 1848, s. 11, imposed a general limitation of time in the case of proceedings to obtain orders of justices. The Poor Law Amendment Act, 1849, s. 9, prevents its operation upon these proceedings, but requires the auditor to proceed within nine months from the disallowance or surcharge, or in the event of an appeal to the court or the M. of H. within nine months from the determination thereof (*R.* v. *Tyrwhitt* (1850), 15 Q. B. 249; 14 J. P. 482). As to what is the determination of an appeal, see *Brooks* v. *Dolby*, *infra*.

Enforcement of payment.

(*y*) Where there has been no appeal, or the appeal has been decided in favour of the auditor's decision, and there has been no remission, the justices must enforce the auditor's decision. They have no discretion in the matter (*R.* v. *Tyrwhitt* (1853), 2 El. & Bl. 77; 17 Jur. 893; *R.* v. *Linford* (1857), 7 El. & Bl. 950; *R.* v. *Finnis* (1859), 28 L. J. M. C. 301; 23 J. P. 340; *cf. R.* v. *Fermanagh JJ.* (1910), 44 Ir. L. T. 188, and see also note (*d*) to s. 32 of the Poor Law Amendment Act. 1844, *post*, Vol. II. As to the period of limitation, see preceding note. "Determination of the appeal" means the final determination, and the M. of H. may, with the consent of all parties, reconsider their determination, and the time for enforcing the auditor's certificate runs from the determination upon the reconsideration (*Brooks* v. *Dolby* (1902), 66 J. P. 532). In *R.* v. *Fordham* (1873), L. R. 8 Q. B. 501; 37 J. P. 420, it was held that while the certificate of the auditor was primâ facie evidence of the amount due, it was not conclusive. Where, therefore, the certificate was for £139, and the overseers upon whom the surcharge was made proved a subsequent payment of £84, it was held that the justices were right in issuing their distress warrant for the balance only. In *R.* v. *Master* (1869), L. R. 4 Q. B. 285; 33 J. P. 436, it was held that a balance due on an auditor's certificate was a debt only, and that the mode given for enforcing it did not make the non-payment an offence. Therefore, when an overseer to whom a certificate related obtained his discharge under an adjudication in bankruptcy, it was held that the debt being provable was barred by the order of discharge, and no proceedings could be taken to enforce it. The payment of the sum certified, together with the costs of the proceedings for the recovery thereof, must now be enforced as if it were a poor rate 47 & 48 Vict. c. 43, s. 11). With regard to the provision as to the auditor's costs, reference should be made to *Prest* v. *Royston Union* (1875), 33 L. T. 564; 24 W. R.

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174, which was the sequel to *R.* v. *Fordham*, *ante*, p. 547. The justices having refused their warrant for more than £84, the auditor applied for a *mandamus* to the justices, but it was refused. The overseer then applied to the L. G. B., who consented to remit the disallowance, on condition that the overseer would pay the auditor's costs incurred before the justices and the court. The auditor, having failed to obtain the performance of this condition by the overseer, brought an action against the guardians for his costs under the corresponding provisions of 7 & 8 Vict. c. 101, s. 32. It was held that under the circumstances the defendants were liable. "The intention of the legislature clearly was that such an officer should not suffer the costs incurred by his bonâ fide discharge of duties imposed upon him."

Publication of abstract.

(*z*) The accounts are those which have been audited. It is left to the clerk to make the abstract. It would have been better if the abstract were made by the auditor, or at least acknowledged and verified by him. But see now the L. G. A., 1894, s. 58 (3), cited in note (*g*), *supra*.

Audit under local Acts.

The charges for publication are to be borne by the general district fund.

(*aa*) A doubt arose as to whether the accounts of Commissioners acting under local Acts were, after 35 & 36 Vict. c. 79, liable to be audited by the district auditor. This was decided in the affirmative in *R.* v. *West Bromwich* (*Commissioners of*), Q. B. Trin. Term, 1875; *Gibson* v. *Bell* (1875), 39 J. P. 421. The language of this section in sub-s. (1), however, is clear. But there may be other provisions in the local Act with reference to another audit; and where they are contradictory to those of this Act, the latter are to prevail. If they are not so, they may continue to be acted upon. See s. 341, *post*, p. 666. Where the Commissioners have other than sanitary duties to perform, and have, therefore, accounts as to other matters, if they can keep the accounts separate, the auditor referred to in this section will have no authority to audit them; but if they are not distinct, the whole must be submitted to him. And he is entitled to call for all the accounts so as to satisfy himself that they are distinct. This was stated by the court when the cases above referred to were argued.

Audit of accounts of rural authority. [Repealed in part by 56 & 57 Vict. c. 73, s. 89.]

248. *The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.*

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

See also the statutory provisions as to audit in App. I., *post*, Vol. II., and as regards overseers' accounts, see the General Order for Accounts dated Jan. 14th, 1867, in Macmorran and Lushington's Poor Law General Orders, 2nd ed. by Macmorran and Naldrett, p. 399.

The overseers of every parish are, by a General Order of the L. G. B., dated Sept. 8th, 1903, required to make up and balance their books and accounts to March 31st and Sept. 30th in each year. This Order also prescribes a form of balance-sheet for use by overseers.

The L. G. A., 1894, s. 89, Sched. II., repealed the present section except so far as it relates to overseers. By s. 58 (2) of the same Act the said accounts (*i.e.*, the accounts of the receipts and payments of district councils, their committees, and officers) shall, except in the case of the accounts audited by the auditors of a borough (*i.e.*, the accounts of municipal corporations as urban sanitary authorities), but inclusive of the accounts of a joint committee appointed by a borough council with another

council not being a borough council, be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees, and officers, the audit shall be half-yearly instead of yearly. By s. 58 (3) the L. G. B. may, with respect to any audit to which that section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor. And by s. 58 (5) every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district. See the General Order of the Ministry of Health dated December 16th, 1915, in Appendix II., *post*, Vol. II., as to the audit of the accounts of rural district councils, which contains modifications of sub-sections (3) and (10) of s. 247 of the P. H. A., 1875.

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249. On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be primâ facie evidence of the reasonableness of the amount, but not of the legality of the charge.

Taxation of bill of solicitor or attorney.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the Master of the Crown Office, and declared by an order of the Local Government Board (*a*).

If any such bill is not taxed by the clerk of the peace or some other duly authorised taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final (*b*).

(*a*) It will be observed that this section applies to all sanitary authorities.

The L. G. B. on April 20th, 1877, issued a General Order relating to the taxation of law bills of urban and rural sanitary authorities; it recites the first two paragraphs of this section, and then proceeds thus:—

General order on taxation of law bills.

"And whereas the Master of the Crown Office has fixed the rate of allowance to the clerk of the peace in respect of such taxation as herein declared:

"Now, therefore, We, the Local Government Board, in pursuance of the Act above recited, hereby order and declare that the clerk of the peace of every county or place in England and Wales shall be allowed after the rate of fourpence per sheet or folio of seventy-two words for the taxation of every bill due to any solicitor in respect of legal business performed on behalf of any local authority whose accounts are required by that Act to be audited."

As to the employment by a local authority of a solicitor as their clerk, and their right to recover costs for his services, see *Henderson* v. *Merthyr Tydfil U. D. C.*, *ante*, p. 452.

The M. of H. hold that the costs of a local authority in promoting or opposing a Provisional Order, or in parliamentary proceedings of any kind, should be taxed by the taxing officer of one of the Houses of Parliament, and they usually decline to accept as sufficient in such cases (for the purposes of s. 247 or s. 298) a taxation by the clerk of the peace (*cf. Lurgan U. D. C.* v. *Moore and Johnston*, [1906] 1 I. R. 599). The L. G. B. stated that the costs of proceedings in any particular court must be submitted to the proper officer of that court, not to the clerk of the peace, but it is understood that the M. of H. do not entirely concur in the above view. The advisers of the Ministry think that the proper and normal procedure is for the solicitor's bill to be taxed by the clerk of the peace in all cases, save and except in those cases in which such bill relates to litigation and where, in the course of that litigation, it falls to a taxing master to tax the bill; see 85 J. P. N. 485.

It will be observed that the section only applies to bills in respect of legal

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business performed on behalf of the local authority. Consequently the costs of the solicitor to the vendor of land purchased by a local authority do not come within the section, even though such costs may be payable by the authority.

See also s. 52 of the Lands Clauses Consolidation Act, 1845.

Finality of auditor's decision.

(*b*) In *R.* v. *Hunt* (1856), 6 El. & Bl. 408, the Queen's Bench held, upon the construction of 7 & 8 Vict. c. 101, s. 39, from which this section is taken, that the auditor's decision in such a case could not be investigated or controlled by them, and the M. of H. consider themselves equally concluded.

Taxation.

It is to be observed that the taxation by the clerk of the peace is only primâ facie evidence of the reasonableness of the charges, and does not conclude the auditor. Nor is it any evidence of retainer. See also *Southampton Guardians* v. *Bell* (1888), 21 Q. B. D. 297; 52 J. P. 567, a decision on the similarly-worded provision (s. 39) of the Poor Law Amendment Act, 1844. It was there held that a solicitor employed by guardians was entitled, notwithstanding that his bill of costs had been taxed by the clerk of the peace, to an order for taxation as between solicitor and client under the Solicitors Act, 1843.

It should be observed that a bill against a sanitary authority may be ordered to be taxed in the ordinary way, and an order to refer to a master for taxation was held good in *Blake* v. *Croydon Rural Authority* (1886), 2 T. L. R. 336.

As to the wording of the common form order to tax a solicitor's bill of costs, of which some items may be statute barred, see *In re Brockman*, [1909] 2 Ch. 170. Even though the client is a local authority, the taxing officer taxing a bill as between solicitor and client must allow items incurred on the client's special instructions for which usual charges are made. The question whether the items ought to be allowed as between the authority and the ratepayers is one for the auditor and not for the taxing officer (*In re Porter, Amphlett* v. *Jones*, [1912] 2 Ch. 98). There is no reason why a local authority employing a solicitor in respect of a sale, purchase or mortgage of land should not assent to his election to charge according to the old system instead of by scale (*In re Evans*, [1905] 1 Ch. 290; 69 J. P. 104). See also as to disallowing an item which the authority are willing to pay, *In re Frank James & Sons*, [1903] W. N. 99, discussed in the two preceding cases.

Two local authorities agreed to carry out a joint sewerage scheme by an agreement which stipulated that all disputes as to the matters comprised therein should be settled by arbitration in the manner provided by ss. 179, 180, *ante*, pp. 425, 426. An award given in an arbitration arising out of the agreement directed that one of the authorities should pay to the other the costs of the reference and award. Upon motion for an order directing the taxation of the costs:—*Held*, that as the submission to arbitration had been made a rule of court, the taxing master was bound to tax the costs upon the application of the successful party; and that it was not obligatory on such party to bring an action upon the award in order to obtain such a taxation (*Chesterfield* (*Corporation of*) v. *Brampton L. B.* (1886), 50 J. P. 824).

As regards the charges of local authorities in promoting or opposing Bills in Parliament, the Borough Funds Acts, 1872 and 1903, in App. I., *post*, Vol. II., *post*, must be attended to. See the notes to s. 218, *ante*, p. 499.

Auditor to audit accounts of officers.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.

See the notes on s. 247, *ante*, p. 541. This section does not prevent the local authority from exercising their own supervision over the accounts of their officers according to s. 195, *ante*, p. 461.

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, etc.

Summary proceedings for offences, penalties, etc.

251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for (*a*), may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction (*b*). The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions (*c*), or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice (*d*).

(*a*) See s. 196, *ante*, p. 462, as to proceedings against officers in default, and s. 256, *post*, p. 564, as to the recovery of rates.

A local authority sued ratepayers for services rendered by a fire brigade on two days. On the first day the brigade were employed in pumping water to prevent a fire. On the second day certain men of the brigade were retained, at the defendants' request, to be on hand during the removal of debris, but it was found as a fact that there was very small, if any, risk of fire breaking out on this day. It was held that the defendants were bound to pay for the employment of the men on the second day, and that the sum due was not a "cost or expense under this Act" but was recoverable by action (*Grays Thurrock U. D. C.* v. *Grays Chemical Works, Ltd.*, [1918] 2 K. B. 461; 82 J. P. 207).

The P. H. A., 1907, s. 6, provides that offences under that Act, or under any bye-law made under the powers of that Act, or under the powers of this Act, or any enactment amending or extending this Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts.

(*b*) See the definition of those terms in s. 4, *ante*, p. 36. The Summary Jurisdiction Acts are 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49: 44 & 45 Vict. c. 24; 47 & 48 Vict. c. 43, and 62 & 63 Vict. c. 22. See also the Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58).

Effect of S. J. A., 1879.

It is, of course, impossible to incorporate here the provisions of these Acts. At the same time it is necessary to offer a few observations with reference to the S. J. A., 1879, which was passed after this Act, and in some respects created important changes in the law. The principal change consists in the distinction drawn by it between informations for offences of a criminal nature and complaints for the payment of money. Under the Act of 1848 there was no such distinction, so far as concerned the enforcing of a conviction or order; both were enforced by distress and imprisonment. Now by s. 6 of the Act of 1879, when, under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a *civil debt*, and if recovered before a court of summary jurisdiction, shall be recovered in the manner in which a sum declared by that Act to be a civil debt recoverable summarily, is recoverable under that Act, and not otherwise. And the payment of any costs ordered to be paid by the complainant or defendant in case of any such complaint, are to be enforced in like manner as such civil debt and not otherwise. By s. 35, any sum declared by the Act or by any future Act to be a civil debt which is recoverable

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summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts. The section goes on to provide that a warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint, and that the order is not to be enforced by imprisonment, except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under s. 5 of the Debtors Act, 1869. This distinction between a conviction on information and an order made on complaint for the recovery of a sum of money, is very clearly set out in the judgment of FIELD, J., in *R.* v. *Paget* (1881), 8 Q. B. D. 151; 46 J. P. 151, and in *R.* v. *Kerswill* (or *Torquay JJ.*), [1895] 1 Q. B. 1; 59 J. P. 342. The distinction is of peculiar importance with reference to its application to this Act. It happens more than once, for example in s. 21, *ante*, p. 78, that a penalty is imposed for an offence which the local authority are authorised to remedy, and that the local authority are empowered to recover summarily the expense incurred in providing this remedy. In proceeding for the penalty, the local authority lay an information, and the defendants may be convicted; in proceeding to recover these expenses, they make a complaint and the defendant is ordered to pay the money, which is thus a civil debt. The importance to the defendant is obvious. If he is convicted of the offence and fined, he may be sent to prison in default of distress; if he is ordered to pay a sum of money he cannot be imprisoned except by order made on judgment summons on proof of means.

Reference should also be made to the provisions of the Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58).

"Criminal proceedings."

The test of criminal proceedings is stated by BRAMWELL, B., in *R.* v. *Whitchurch*, *ante*, p. 184, to consist in the liability to have the penalty enforced by imprisonment in default of distress or payment. See also *per* CROMPTON, J., in *Parker* v. *Green* (1862), 31 L. J. M. C. 133; *per* PALLES, C.B., in *R.* v. *Sullivan* (1874), I. R. 8 C. L. 404; *Reeve* v. *Wood* (1864), 34 L. J. M. C. 15; *Mellor* v. *Denham* (1880), 5 Q. B. D. 467; 44 J. P. 472; *Att.-Gen.* v. *Kissane* (1893), 32 L. R. Ir. 220; *Ex parte Schofield*, [1891] 2 Q. B. 428; 56 J. P. 4; *Burnett* v. *Berry* (1896), 60 J. P. 550; 12 T. L. R. 464; *Seaman* v. *Burley*, [1896] 2 Q. B. 344; 60 J. P. 772; *Southport (Mayor, etc. of)* v. *Birkdale U. D. C.* (1897), 76 L. T. 318; 18 Cox C. C. 537; *Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, [1899] 1 Q. B. 273; 63 J. P. 100; *R.* v. *D'Eyncourt* (1901), 85 L. T. 501; *Robson* v. *Biggar*, [1908] 1 K. B. 672; *R.* v. *Garrett*; *Ex parte Sharf*. [1917] 2 K. B. 99; 81 J. P. 145; *Clifford and O'Sullivan*, [1921] 2 A. C. 570; *R.* v. *Manchester Profiteering Committee* (1920), 84 J. P. 177; 36 T. L. R. 715. The distinction between civil and criminal proceedings is important for other reasons. In a criminal proceeding, if the justices dismiss the information, no appeal will lie to quarter sessions; if a case is stated for the opinion of the High Court, no appeal will lie to the Court of Appeal from the decision of the High Court.

As to the procedure to compel justices to hear and determine a case, see *R.* v. *Phillimore* (1884), 48 J. P. 774; 51 L. T. 205; *R.* v. *Biron* (1884), 14 Q. B. D. 474; 49 J. P. 68.

Special cases.

When justices decide that they have no jurisdiction, it is often difficult to say whether *mandamus* or special case is the appropriate remedy (see, *e.g.*, *Wakefield L. B.* v. *West Riding Rail. Co.* (1866), 35 L. J. M. C. 69; *Muir* v. *Hore* (1877), 47 L. J. M. C. 17; *R.* v. *Wisbech JJ.* (1890), 54 J. P. 743; 7 T. L. R. 21).

The practice as to the stating of a special case under 20 & 21 Vict. c. 43, or under the S. J. A., 1879, cannot be fully treated in this Work. The law on the subject will be found in Stone's Justices' Manual and in the Encyclopædia of Local Government Law, Vol. I., at pp. 475 *et seq.*, but the principal cases decided with reference thereto may be referred to:—

The court will not allow a case to be argued where the statutory requirements have not been complied with; and neither the justices nor the parties can excuse or waive non-compliance with a condition precedent (*Westmore* v. *Paine*, [1891] 1 Q. B. 482; 55 J. P. 440). Subject to the qualification that compliance is a condition precedent only when it is possible to comply (*Mayer* v. *Harding* (1867), L. R. 2 Q. B. 410; *Syred* v. *Carruthers* (1858), 27 L. J. M. C. 273; 23 J. P. 37; *Morgan* v. *Edwards* (1860), 29 L. J. M. C. 108; 24 J. P. 245; *Woodhouse* v. *Woods* (1859), 29 L. J. M. C. 149; 23 J. P. 759; *R.* v. *Leicestershire JJ.* (1850), 15 Q. B. 88; *Anderson*

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v. *Reid* (1902), 66 J. P. 564 ; 86 L. T. 713), the appellant must bear in mind that the following omissions will, as a rule, prove fatal :

(1) Omission to apply in writing (*South Staffordshire Water Co.* v. *Stone* (1887), 19 Q. B. D. 168 ; 51 J. P. 662 ; *Lockhart* v. *St. Alban's* (1888), 21 Q. B. D. 188 ; 52 J. P. 420). It makes no difference that, at the hearing, the Bench, in reply to a verbal request, undertook to state a case (*Westmore* v. *Paine*, *supra*). At the time when the above cases were decided, Rule 18 of the Summary Jurisdiction Rules, 1886, required a copy to be served on each of the justices. By a Rule of March 20th, 1906, the application was to be left with the clerk to the justices, and a copy was to be left with him for each of the justices. It was, however, held to be a sufficient compliance with the new Rule when each of the justices was served personally, and a copy left with the clerk (*R.* v. *Woodcock*, [1907] 2 K. B. 104 ; 71 J. P. 241). The Rule now in force is No. 52 of the S. J. Rules, 1915, and is as follows :— "An application to a court of summary jurisdiction under s. 33 of the S. J. Act, 1879, to state a special case shall be made in writing and shall be left with the clerk of the court at any time within seven clear days from the date of the proceedings to be questioned and there shall also be left with him a copy of such application for each of the justices constituting such court which shall be duly forwarded by him to each of the said justices. The case shall be stated within three calendar months after the date of the application and after the recognizance shall have been entered into."

(2) Omission to serve the application for a case upon the justices' clerk within seven days. See *R.* v. *Knill* (1893), 57 J. P. 277, and new Rule of 1915, referred to, *supra*.

(3) Omission to enter into the recognizance before the case is stated (*Walker* v. *Delacambo* (1894), 63 L. J. M. C. 77 ; 58 J. P. 88). See also as to the recognizance, *Stanhope* v. *Thorsby* (1866), L. R. 1 C. P. 423 ; *Chapman* v. *Robinson* (1859), 28 L. J. M. C. 30 ; 1 El. & El. 25 ; *R.* v. *Kettle*, [1905] 1 K. B. 212 ; 69 J. P. 55 ; as to recognizances by a corporation, see *Southern Counties Bank* v. *Boaler* (1895), 59 J. P. 536 ; 73 L. T. 155.

(4) Omission to serve personally upon the respondent notice in writing of the appeal, together with a copy of the case, before transmitting to the Crown Office (*Woodhouse* v. *Woods*, *ante*, p. 552 ; *Hill* v. *Wright* (1896), 60 J. P. 312 ; *Rust* v. *St. Botolph, Bishopsgate* (1906), 94 L. T. 575 ; *Foss* v. *Best*, [1906] 2 K. B. 105 ; 70 J. P. 383 ; *South Dublin Union* v. *Jones* (1883), 12 L. R. Ir. 358 ; *Hollidge* v. *Ruislip-Northwood U. D. C.* (1913), 77 J. P. 126. But see *Syred* v. *Carruthers ; Anderson* v. *Reid ; Morgan* v. *Edwards ; Woodhouse* v. *Woods*, *ante*, p. 552 ; *Clarke* v. *McGuire*, [1909] 2 I. R. 682 ; *Wills* v. *McSherry ; Teddington U. D. C.* v. *Vile ; Godman* v. *Crofton*, *post*, p. 554). The actual receipt of the notice and copy case (whether through the post or otherwise) must be prior to the lodgment at the Crown Office (*Edwards* v. *Roberts*, [1891] 1 Q. B. 302 ; 55 J. P. 439 ; *Ashdown* v. *Curtis* (1862), 31 L. J. M. C. 216 ; 26 J. P. 312). Where service of the notice and copy is made on the same day as the lodgment at the Crown Office, the appellant will not be required to prove that the lodgment was at a later period of the day (*Verney* v. *Fletcher*, [1909] 1 K. B. 444 ; 73 J. P. 131). As to the form of notice of appeal, see *Provincial Motor Cab Co.* v. *Dunning*, [1909] 2 K. B. 599 ; 73 J. P. 387 ; *Dickeson & Co., Ltd.* v. *Mayes*, [1910] 1 K. B. 452 ; 74 J. P. 139.

(5) Omission to lodge the case at the Crown Office within three days after its receipt (*Aspinall* v. *Sutton*, [1894] 2 Q. B. 349 ; 58 J. P. 622 ; *Phillips* v. *Jones* (1893), 57 J. P. 84). In *Syred* v. *Carruthers*, *supra*, delivery to the solicitor who represented the party at the hearing, and was, so far as the justices knew, still acting for him, was held to be a receipt. See, too, *Pennell* v. *Uxbridge* (1862), 31 L. J. M. C. 92 ; 5 L. T. 685 ; *Banks* v. *Goodwin* (1863), 32 L. J. M. C. 87 ; 27 J. P. 404. As to lodgment at the Crown Office on holidays or after closing time, see *Holland* v. *Peacock*, [1912] 1 K. B. 154 ; 76 J. P. 68, and *cf. Mayer* v. *Harding*, *supra*.

(6) Omission to lodge a restated case within three days of its receipt from the justices (*Gloucester L. B.* v. *Chandler* (1863), 32 L. J. M. C. 66). After

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the lapse of the three days the case is dead, and cannot be revived by the justices making a further alteration and re-signing it (*ibid.*, and *cf. Aspinall* v. *Sutton*, *ante*, p. 553).

In computing the periods of three and seven days respectively, Sunday counts; if, therefore, the last day be a Sunday, the periods are reduced to two and six days respectively (*Peacock* v. *R.* (1858), 27 L. J. C. P. 224; 4 C. B. (N.S.) 264; *Wynne* v. *Ronaldson* (1865), 29 J. P. 566; 12 L. T. 711; *Pennell* v. *Uxbridge*, *ante*, p. 553; *Ex parte Simpkin* (1859), 2 El. & El. 392; 29 L. J. M. C. 23; but *cf. Holland* v. *Peacock*, *ante*, p. 553).

The following are some of the cases in which failure to comply with the statute or rule has been held to be not fatal:—An appellant demanded from justices a special case on September 29th. On receiving a draft case he asked for alterations, and, without any fault of his, the case was not finally stated till February 19th, when it was duly lodged in the Crown Office. The respondents moved to strike out the case, as it had not been stated within three months pursuant to Summary Jurisdiction Rule 18; it was held that the provision as to stating a case within three months was not a condition precedent, but merely directory, and that the court had jurisdiction to hear the case (*Hughes* v. *Wavertree L. B.* (1894), 58 J. P. 654; 10 T. L. R. 357; and *cf. Lane* v. *Rendall*, [1899] 2 Q. B. 673; 63 J. P. 757).

Where, on receipt of the case, the respondent could not be found, and therefore could not be served within three days with notice of the appeal and a copy of the case, it was held sufficient that the solicitor who appeared for him before the justices had been served within the three days, the respondent having, on being afterwards found, received the notice and copy (*Syred* v. *Carruthers*, *ante*, p. 552).

In another case the notice of appeal and the copy of the special case could not be personally served on the respondent (a sailor), as he had left the country on board his ship, and it was served on the solicitor who represented him before the magistrate, but who had ceased to represent him in the matter. The respondent was not personally served till some months afterwards on his return home. It was held that the service was sufficient (*Anderson* v. *Reid* (1902), 66 J. P. 564; 86 L. T. 713; *cf. Wills* v. *McSherry*, [1913] 1 K. B. 20; 77 J. P. 65).

Where no copy of a special case with notice in writing of the appeal had been given to the respondent, but every effort had been made to serve her and the court was satisfied that she knew about it, the court heard the appeal (*Teddington U. D. C.* v. *Vile* (1906), 70 J. P. 381).

These cases are instances of the qualification (of the rule) previously mentioned, that when the appellant had done all that he possibly can to comply with the requirements of the statutes and rule, he is entitled to have the case argued. The only decision opposed to this conclusion is *Foss* v. *Best*, *ante*, p. 553, and in that case the attention of the court was not drawn to the dicta of the learned judges in *Woodhouse* v. *Woods*, *ante*, p. 552; *Morgan* v. *Edwards*, *ante*, p. 552; and the decision in *Anderson* v. *Reid*, *supra*.

In *Godman* v. *Crofton* (1914), 3 K. B. 803; 79 J. P. 12, service on respondent's solicitor who had undertaken to accept service was held sufficient.

Signature of case.

All the adjudicating justices should sign the case (*Barker* v. *Hodgson* (1904), 68 J. P. 310); but see *Nantyglo U. D. C.* v. *Ebley* (1905), 69 J. P. N. 40 (absence abroad), and *Kean* v. *Robinson*, [1910] 2 I. R. 306 (death); and *cf. Toppin* v. *Marcus* (1908), 42 Ir. L. T. 87. When a magistrate resigns after having agreed to state a case, the fact that he did not sign the case until after his resignation does not preclude the court from hearing the appeal (*Grocock* v. *Grocock* (1919), 83 J. P. 185; 17 L. G. R. 623). Justices stating a case under 20 & 21 Vict. c. 43, are to be deemed to have stated it under all their powers, including 42 & 43 Vict. c. 49 (*Rochdale Building Society* v. *Rochdale* (*Mayor, etc. of*) (1886), 51 J. P. 134; *Stokes* v. *Mitcheson*, [1902] 1 K. B. 857; 66 J. P. 615).

As to the effect of the death of a party pending the hearing, see *Finchley U. D. C.* v. *Blyton* (1913), 77 J. P. N. 556, and cases on pp. 603, 604, *post*.

Points open on argument of case.

Upon the argument, a point cannot be taken upon the facts stated which was not taken before the justices except upon a question of law which no evidence could alter (*Kates* v. *Jeffery*, [1914] 3 K. B. 160; 78 J. P. 310).

Costs on special case.

The costs of a special case are entirely in the discretion of the court, whether it be duly heard, or previously struck out, or abandoned, or not heard as being irregular

(*Crowther* v. *Boult* (1884), 13 Q. B. D. 680; 49 J. P. 135; *G. N. Rail. Co.* v. *Inett* (1877), 2 Q. B. D. 284; *Diss Urban Sanitary Authority* v. *Aldrich* (1877), 2 Q. B. D. 179, 285, note (3); 41 J. P. 549), and this discretion is not excluded by the fact that the Crown is directly or indirectly a party to the appeal (*Moore* v. *Smith* (1859), 1 El. & El. 597; 28 L. J. M. C. 126; *Thomas* v. *Pritchard*, [1903] 1 K. B. 209; 67 J. P. 71). As to allowing costs to the Crown where the Crown if unsuccessful would not be liable for costs, see *R.* v. *G. N. Rail. Co.*, [1908] 2 I. R. 32.

Where the respondent succeeds the appellant will almost invariably have to pay his costs (*Davis* v. *Douglas* (1859), 23 J. P. 135); but see as to an appeal dismissed on a technical preliminary point, *Rust* v. *St. Botolph, Bishopsgate* (1906), 94 L. T. 575, and *Eustace* v. *Cooke & Co., Ltd.*, *ibid.* 577 n.

Where both parties appear and the appellant succeeds, the same general rule as to "costs following the event" prevails (*Davis* v. *Douglas*, *supra*). In one case, however, where the question of law to be decided was very doubtful the court refused to give the successful appellant his costs (*Leech* v. *North Staffordshire Rail. Co.* (1860), 29 L. J. M. C. 150; 1 L. T. 332). A successful appellant will usually be deprived of his costs if the court decide in his favour upon a point not taken before the justices (*Stinson* v. *Browning* (1866), L. R. 1 C. P. 321; *Ex parte Markham* (1870), 34 J. P. 150; 21 L. T. 748). In *London, Edinburgh and Glasgow Assurance Co.* v. *Partington* (1903), 67 J. P. 255; 88 L. T. 732, where the court allowed to be taken a point which was not taken below, the successful appellants were ordered to pay the costs thrown away by their not taking the point at the proper time.

Where the appellant succeeds, the respondent not appearing, no definite rule can be laid down; it has been stated that in such cases it is not usual to allow costs (*Lee* v. *Strain* (1859), 28 L. J. M. C. 221; 7 W. R. 432; *Smith* v. *Butler* (1886), 16 Q. B. D. 349; 50 J. P. 260); but the court can, and frequently does, allow them (*Halse* v. *Alder* (1874), 38 J. P. 407; *Wednesbury L. B.* v. *Stephenson* (1864), 33 L. J. M. C. 111; 9 L. T. 731; *Shepherd* v. *Folland* (1884), 49 J. P. 165; *Greenbank* v. *Sanderson* (1884), 49 J. P. 40; *Solomon* v. *St. Mary's, Islington* (1900), Times, February 16th; *Usk U. D. C.* v. *Mortimer* (1903), 68 J. P. 38; 90 L. T. 25; *Robinson* v. *Gregory*, [1905] 1 K. B. 534; 69 J. P. 161).

In *Greenbank* v. *Sanderson*, *supra*, it was said that it is usual to allow costs where it was necessary for the appellant to appeal in order to have a judgment reversed. In a recent case (*Pearks, Gunston & Co.* v. *Van Tromp*, heard on June 23rd, 1902, but which does not appear to have been reported), the court said that it was usual to allow costs against a respondent who does not appear where the respondent was the party who set the law in motion; see also *Booth* v. *Helliwell* (1915), 78 J. P. 223, *per* AVORY, J.; and *cf. Gordon* v. *Cann* (1899), 63 J. P. 324; 15 T. L. R. 165. In another recent case (*Usk U. D. C.* v. *Mortimer*, *supra*), it was held that where it is the duty of a public body to take proceedings before justices of a civil nature, and the defendant raises an untenable point which succeeds, then, although he does not appear on the argument of the case, it was proper that costs should be allowed against him. So, too, where the proceedings taken are of a criminal nature (*Robinson* v. *Gregory*, *supra*).

In one case where the respondent did not appear, but the justices did and were allowed to oppose the appeal, costs were given against them (*Heywood* v. *Whitehead* (1896), 76 L. T. 781). Apparently the attention of the court was not directed to the S. J. A., 1857, s. 6, *supra*, and the case stands alone, not merely upon the point as to costs, but also as to the justices being allowed to appear at all, as to which see *Smith* v. *Butler* (1886), 16 Q. B. D. 349; 50 J. P. 260.

Notwithstanding a statement to the contrary in *Wednesbury L. B.* v. *Stephenson* (1864), 33 L. J. M. C. 111; 9 L. T. 731, it is not now the practice to include costs in the judgment as a matter of course. They must be asked for, and at the hearing of the appeal; any delay will be fatal, unless there be some good ground to account for it. See *Cook* v. *Montague*, *infra*; *Budenburg* v. *Roberts* (1867), L. R. 2 C. P. 292; *Newman* v. *Jones* (1886), 17 Q. B. D. 132; 50 J. P. 373.

The allowance of "costs" by the court means costs of the appeal only, but the court has power to, and may in a case of oppressive or vexatious proceedings, order the respondent to pay the appellant's costs before the justices (*Cook* v. *Montague* (1873), 28 L. T. 494; 21 W. R. 670). It is true that in a later case the court doubted whether they had power to make such an order, and declined to do so (*Slaughter* v. *Sunderland* (*Mayor, etc. of*) (1891), 60 L. J. M. C. 91; 55 J. P. 519); but *Cook*

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v. *Montague*, *supra*, was not cited. See also *Newman* v. *Jones* (1886), 17 Q. B. D. 132; 50 J. P. 373.

"Costs" include any costs properly incurred in connection with the preparation and amendment of the case, and are not restricted to the fees payable to the clerk to the justices (*Glover* v. *Booth* (1862), 31 L. J. M. C. 270; 2 B. & S. 807).

Order to state case.

If justices refuse to state a special case, the court may order them to do so; see as to costs in such an event, *R.* v. *Bell* (1899), 15 T. L. R. 487; *R.* v. *Bradford JJ.* (1884), 48 J. P. 149. On an application for such an order it is now common, if the parties agree, to treat the affidavits as amounting to a case and to dispose finally of the real point in issue (*R.* v. *Denman* (1907), 5 L. G. R. 649).

Justices will not as a rule be ordered to state a case where the point in issue could more conveniently be raised on *certiorari* (*R.* v. *Owen* (1907), 72 J. P. 60; 52 Sol. J. 132). A person who asks for a case waives any right of appeal to sessions (S. J. A., 1857, s. 14) and also, as a rule, his right to a *certiorari* (*Palmer* v. *Thatcher* (1878), 3 Q. B. D. 346; 42 J. P. 213; *R.* v. *Thomas* (1901), 18 T. L. R. 71; but see *R.* v. *Part* (1906), 70 J. P. 398; 4 L. G. R. 1122; *R.* v. *Hodgson* (1864), 12 W. R. 423).

Justices cannot state a special case on the hearing of an application for a cinematograph licence (*Huish* v. *Liverpool JJ.*, [1914] 1 K. B. 109; 78 J. P. 45); nor *semble* on an *ex parte* application (*Dunlop* v. *Boal* (1913), 47 Ir. L. T. 14; but see *Ex parte Flinn* (1899), 15 T. L. R. 406, 487).

When justices find that an offence is proved but dismiss the information under the Probation of Offenders Act, 1907, there is a "determination" by the justices, and the accused is entitled to appeal therefrom by way of case stated (*Oaten* v. *Auty* [1919] 2 K. B. 278; 83 J. P. 173).

As to stating a case where the statute says that a decision of justices shall be final, see *Kydd* v. *Liverpool Watch Committee*, [1908] A. C. 327; 72 J. P. 395; *Westminster Corporation* v. *Gordon Hotels, Ltd.*, [1908] A. C. 142; 72 J. P. 201; *Wills* v. *McSherry* (No. 2), [1914] 1 K. B. 616; 78 J. P. 120.

See as to power to state a case on hearing of an appeal from a refusal to grant a licence (*London Corporation* v. *Wolff* (1916), 80 J. P. 453; 14 L. G. R. 1123).

In an Irish case it was held that when a case is sent back for the justices to find further facts the justices should give the parties an opportunity of being reheard, and, if they so desire, of giving evidence in relation to the facts required to be found (*Vincent Forte* v. *McAlister*, [1917] 2 I. R. 387).

Procedure where justices equally divided.

Where there is an equal division of opinion amongst the justices they may adjourn a case for a rehearing before a reconstituted court (*Bagg* v. *Colquhoun*, [1904] 1 K. B. 554; 68 J. P. 159). If they do not adjourn, they should apparently dismiss the information or complaint (*R.* v. *Ashplant* (1888), 52 J. P. 474). *Cf.*, however, *R.* v. *Wardle* (1898), 14 T. L. R. 424, where it was doubted if this was a proper course to be adopted in a civil case. If a case is so dismissed the matter becomes *res judicata* so far as summary proceedings are concerned (*Kinnis* v. *Graves* (1898), 67 L. J. Q. B. 583; 78 L. T. 502). As a further alternative, one of the justices might retire or withdraw his opinion (*Ex parte Evans*, [1894] A. C. 16; 58 J. P. 260; and see *R.* v. *Thomas*, [1914] 1 K. B. 32; 78 J. P. 55).

The Probation of Offenders Act, 1907, s. 1, provides as follows:

Trifling offences.

"(1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either—

"(i) dismissing the information or charge; or

"(ii) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

"(2) Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial

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nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

"(3) The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss (not exceeding in the case of a court of summary jurisdiction ten pounds, or, if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable, *and, if the offender is under the age of sixteen years, and it appears to the court that the parent or guardian of the offender has conduced to the commission of the offence, the court may under and in accordance with the Youthful Offenders Act*, 1901, *order payment of such damages and costs by such parent or guardian.* [Italicised words repealed by the Children Act, 1908. See now s. 99, *ibid.*]

"(4) Where an order under this section is made by a court of summary jurisdiction, the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction."

This section (Probation of Offenders Act 1907, s. 1) is not to be too strictly or narrowly construed (*Dunning* v. *Trainer* (1909), 73 J. P. 400; 101 L. T. 421). As to its applicability reference may be made to the following cases decided under the S. J. A., 1879, s. 16, which it replaced: *Banton* v. *Davies* (1892), 56 J. P. 294; *Phillips* v. *Evans*, [1896] 1 Q. B. 305; 60 J. P. 120; *Vinters* v. *Freedman* (1901), 66 J. P. 135; *Salt* v. *Scott-Hall*, [1903] 2 K. B. 245; 67 J. P. 306; *Pomeroy* v. *Malvern U. D. C.* (1903), 67 J. P. 375; 89 L. T. 555; *Nisbet* v. *Lloyd* (1904), 68 J. P. 396; *Barnard* v. *Barton*, [1906] 1 K. B. 357; 69 J. P. 281; *Lee Conservancy Board* v. *Bishop's Stortford U. D. C.* (1906), 70 J. P. 244; 4 L. G. R. 641. See also *Rogers* v. *Barlow & Sons* (1906), 70 J. P. 214; 94 L. T. 519; *Ex parte Marshall* (1907), 71 J. P. 501; *Oaten* v. *Auty*, [1919] 2 K. B. 278; 83 J. P. 173.

Justices are not justified in holding an offence created by statute to be a trifling offence, but may hold that the particular circumstances affecting the commission of it in a particular case make it trifling (*Rennie* v. *Boardman* (1914), 78 J. P. 420, and *Vigers Brothers* v. *L. C. C.*, [1919] 1 K. B. 56; 83 J. P. 6: *per* AVORY, J.).

No action for money recoverable summarily.

As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action for such sums and penalties will not be maintainable. See *St. Pancras* (*Vestry of*) v. *Batterbury* (1857), 2 C. B. (N.S.) 477; 21 J. P. 424; *Blackburn* (*Mayor of*) v. *Parkinson* (1858), 28 L. J. M. C. 7; 23 J. P. 262; *Lamplugh* v. *Norton* (1889), 22 Q. B. D. 452; 53 J. P. 389; *G. W. Rail. Co.* v. *Sharman* (1892), 61 L. J. Q. B. 600; 40 W. R. 643. In the first of these cases it was laid down that when a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy must be adopted. There is no right to come into the High Court for a declaration that the applicant has a right to recover in a court of summary jurisdiction; he can only proceed in the latter court (*Barraclough* v. *Brown*, [1897] A. C. 615; 62 J. P. 275). *Cf.* however, *Barwick* v. *S. E. Rail. Co.*, [1921] 1 K. B. 187; 85 J. P. 65, where it was held that in very special circumstances a declaration may be made, and see *Simmonds* v. *Newport Abercarn Black Vein Steam Coal Co.*, [1921] 1 K. B. 616; 85 J. P. 109. In some cases the remedy in the civil courts is expressly reserved, for example, s. 261, *post*, p. 581, gives an alternative remedy in the county courts for demands under £50.

It may here be mentioned that any information, complaint, warrant, or summons issued for the purpose of the Public Health Acts may contain in the body thereof or in a schedule thereto several sums (*cf.* P. H. A., 1890, s. 8; P. H. A., 1907, s. 8, *post*). See also *R.* v. *Glover*, *ante*, p. 506.

Under the Revenue Act, 1898, s. 8, receipts given by or on behalf of a clerk to justices or a magistrate for money received in respect of a fine need not be stamped.

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(*c*) Consequently the court will be a petty sessional court, as defined by the S. J. A., 1879, s. 20. The same section requires the justices to sit in open court.

(*d*) These words include stipendiary magistrates, who are empowered by statute to do alone whatever is authorised by the Summary Jurisdiction Acts to be done by one or more justices. See 11 & 12 Vict. c. 43, s. 33; 21 & 22 Vict. c. 73; 32 & 33 Vict. c. 34.

It should here be observed that the jurisdiction of a county justice extends to the whole of his county, and is not limited to the division in which he usually acts (*R.* v. *Beckley* (1887), 20 Q. B. D. 187; 52 J. P. 120; *Caistor R. D. C.* v. *Taylor* (1907), 71 J. P. 310; 5 L. G. R. 767; and *R.* v. *Beacontree JJ.*, [1915] 3 K. B. 388; 79 J. P. 461). As to the jurisdiction of borough justices, see the Municipal Corporations Act, 1882, ss. 154—157, and *R.* v. *Williamson* (1891), 7 T. L. R. 534. See also *Ely* v. *Godfrey* (1922), 44 M. C. C. 76.

As to the appearance of the local authority in legal proceedings, see s. 259, *post*, p. 580.

General provisions as to summary proceedings. [Repealed by 47 & 48 Vict. c. 43.]

252. *Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose* (*a*).

The description of any offence under this Act in the words of this Act shall be sufficient in law (*b*).

Any exception exemption proviso excuse or qualification whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and, if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant (*b*).

Time limitation.

(*a*) This clause being identical with the S. J. A., 1848, s. 11, was really superfluous, and was, therefore, repealed by the S. J. A., 1884. The following cases may be referred to:

When an offence is in the nature of continued disobedience to, or default in conforming with a requirement which contemplates the execution of works necessarily taking some time to execute, the time of limitation does not run from the date of the requirement itself. See *Chepstow Electric Light Co., Ltd.* v. *Chepstow Gas Co., Ltd.*, [1905] 1 K. B. 198; 69 J. P. 72. It is doubtful whether the time can be said to begin to run when a person is continuing to disobey an order which is always operative until it is obeyed (*ibid.*).

Where an Act enabled commissioners to pull down dangerous structures and recover the expenses for so doing from the owner in a summary manner according to the S. J. A., 1848, it was held that the six months ran from the date of the demand and refusal, and not from the incurring of the expense (*Labalmondiere* v. *Addison* (1858), 28 L. J. M. C. 25; 23 J. P. 261). The subsequent case of *Eddlestone* v. *Francis* (1860), 7 C. B. (N.S.) 568; 25 J. P. 235, appears at first sight to be inconsistent with the earlier decision; but this is not the case, for the court considered that there had been such a demand in 1854 as would have entitled the local board to have proceeded within six months after that time, and proceedings were not, in fact, taken until 1858. And see *Pool and Forden Highway Board* v. *Gunning* (1882), 51 L. J. M. C. 49; *Corbett* v. *Badger*, [1901] 2 K. B. 278; and *Grece* v. *Hunt*, *ante*, p. 308.

If information is laid within six months, a subsequent amendment, if a different offence is not thereby charged, does not amount to institution of proceedings (*R.* v. *Wakeley*, [1920] 1 K. B. 688; 84 J. P. 31).

In proceedings under the Metropolis Management Act, 1862, s. 75, for infringing a building line, the six months under s. 107 was held to begin to run from the time when the structure was discovered to be so far advanced as to show the full extent of the projection complained of, and not from the completion of the building (*Brutton* v. *St. George's, Hanover Square* (*Vestry of*) (1871), L. R. 13 Eq. 339; 36 J. P. 580). This was dissented from in *Bermondsey* (*Vestry of*) v. *Johnson* (1873), L. R. 8 C. P. 441; 37 J. P. 392, where it was held that the particular section (s. 107), limiting the

time for proceedings, applied only to pecuniary penalties and not to an order under s. 75 for the demolition of a building. But in *Morant* v. *Taylor* (1876), 1 Ex. D. 188 ; 40 J. P. 501, it was held that the S. J. A., 1848, s. 11, which, as already stated, is identical with the text, applied to every kind of order made by a court of summary jurisdiction, and applied therefore to an order for the demolition of a building under a local Act. In that case the complaint was made more than six months after the completion of the building. And see *London C. C.* v. *Cross* (1892), 66 L. T. 731 ; 8 T. L. R. 506 ; *Hull* v. *London C. C.*, [1901] 1 K. B. 580 ; 65 J. P. 309. In calculating the period of six months, the day on which the offence is committed or the matter of complaint arises must be excluded. See *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161 ; 56 J. P. 262. **Note to Section 252.**

The application of this clause to proceedings under s. 150, for the recovery of expenses of paving, etc., in private streets, will be found discussed in the notes to that section. See also s. 257, *post*, p. 568.

It is to be observed that this clause does not apply to continuing offences. See *Mayer* v. *Harding* (1867), 32 J. P. 421 ; 17 L. T. 140 ; *Higgins* v. *Northwich Union* (1870), 34 J. P. 806 ; 22 L. T. 752 ; *Ranking* v. *Forbes* (1869), 34 J. P. 486, 513 ; *Marshall* v. *Smith* (1873), L. R. 8 C. P. 416 ; 37 J. P. 471 ; *Rumball* v. *Schmidt* (1882), 8 Q. B. D. 603 ; 46 J. P. 567 ; *Metropolitan Board of Works* v. *Anthony* (1884), 54 L. J. M. C. 39 ; 49 J. P. 229. And see *R.* v. *Slade* and other cases cited in the notes to s. 158, *ante*, p. 359. Continuing offences.

This section applies only to summary proceedings. Penal actions are governed by 31 Eliz. c. 5, as to which see *Dyer* v. *Best* (1866), L. R. 1 Ex. 152 ; 30 J. P. 151.

As to the application of this clause to complaints for the recovery of rates, see s. 256, *post*, p. 564.

(*b*) These clauses were repealed by the S. L. R. A., 1883, presumably because they are practically identical with the Summary Jurisdiction Acts, 1848, s. 14, 1879, and s. 39 (1), and the Criminal Justice Administration Act, 1914.

253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided (*a*), be had or taken by any person other than by a party aggrieved (*b*), or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General (*c*) : Provided, that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house building manufactory or place situated without their district (*d*). Restriction on recovery of penalties.

The P. H. A., 1907, s. 6, provides that " offences under this Act or under any bye-law made under the powers of this Act or under the powers of the Public Health Act, 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts."

(*a*) In *Fletcher* v. *Hudson* (1880), 5 Ex. D. 287 ; 45 J. P. 5, BRAMWELL, L.J., said : " I think the words ' except as in this Act expressly provided ' must mean ' except when there is an express provision that some person may sue who is neither a party aggrieved, nor a local authority, nor a person acting with the consent in writing of the Attorney-General.' In other words, s. 253 may be read thus : Proceedings may be taken by a party aggrieved ; they may be taken by a person who has the consent of the Attorney-General ; and, lastly, they may be taken by a person who, not being one of the preceding, is expressly authorised to do so. Now I find in the Act three cases, there may be more, in which such persons are expressly so authorised, namely, ss. 192, 193, and rule 70 ; in each of these it is provided that the penalty may be recovered by any person." In addition to the cases cited by the learned judge, Express exceptions.

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ss. 68, 105 and 106 may be referred to as being cases in which proceedings may be taken by persons other than parties aggrieved or persons acting with the consent of the Attorney-General.

The provisions of ss. 116 and 117, *ante*, pp. 218, 220, are not express provisions taking proceedings for the possession of unsound meat out of s. 253. Therefore, where a medical officer of health had seized unsound meat, and it had been destroyed by order of a justice, it was held that such proceedings could not be taken by a superintendent of police without the authorisation of the local authority or the consent of the Attorney-General, as the superintendent was not a party aggrieved (*Dodd* v. *Pearson*, [1911] 2 K. B. 383; 75 J. P. 343).

In the metropolis it has been held that the Metropolitan Paving Act, 1817, s. 123, which empowers justices to proceed on the complaint of the persons having the control of the pavements or of any person appointed in writing for the purpose, does not apply to proceedings under s. 65, which enables justices to entertain proceedings for street obstruction on the complaint of one or more credible witnesses; therefore in proceedings under s. 65 the complainant need not be authorised in writing to make the complaint (*Keep* v. *Alexander* (1909), 73 J. P. 423; 101 L. T. 430).

"Party aggrieved."

(*b*) "Prima facie there is no doubt that anybody may take proceedings to recover a penalty. That is an old rule and is well established. In order to prevent the application of the general rule it must be shown that the Act in plain terms prevents anyone, except certain specified persons, from prosecuting for offences under the Act": *per* KAY, L.J., in *R.* v. *Stewart*, [1896] 1 Q. B. 300; 60 J. P. 356. See also *Cole* v. *Coulton* (1860), 29 L. J. M. C. 125; *Kenealy* v. *O'Keeffe*, [1901] 2 I. R. 39; *Allman* v. *Hardcastle* (1903), 67 J. P. 440; 89 L. T. 553; *Badcock* v. *Sankey* (1890), 54 J. P. 564; *Crabtree* v. *Bulman* (1896), 60 J. P. 489; *Jobson* v. *Henderson* (1901), 64 J. P. 425; *Young* v. *Peck* (1913), 29 T. L. R. 31; 77 J. P. 49; *Savill* v. *Harben* (1919), 83 J. P. 286. It was held that a ratepayer in the district of a local board was not a party aggrieved by a member of the board voting in a matter wherein such member had an interest, and therefore that he could not sue for a penalty without the consent of the Attorney-General (*Boyce* v. *Higgins* (1853), 14 C. B. 1; 23 L. J. C. P. 5); but *quære* whether this case would now be considered law, having regard to *Fletcher* v. *Hudson*, *supra*, which expressly overrules *Smith* v. *Fieldhouse* (1876), 35 L. T. 602. The same observation applies to *Hollis* v. *Marshall* (1858), 22 J. P. 210; 2 H. & N. 755, where a disqualified person was returned as member of a board and acted; and it was held that a defeated candidate at the election, or a ratepayer in the district, was not a party aggrieved. Again, in *Rochfort* v. *Atherley* (1876), 1 Ex. D. 511, the defendant, who was acting as chairman of a local board after disqualification, made a complaint to the members thereof as to certain conduct of the plaintiff, who was clerk of the board; the plaintiff fearing that he might be dismissed from his office, resigned it and sued the defendant for a penalty under Sched. II., r. 70. It was held that he was not a party aggrieved within this section. While these decisions may stand as to the construction of the words *party aggrieved*, they had ceased to be of any authority for the proposition that a person other than a party aggrieved might not sue for penalties under Sched. II., r. 70, even before it was repealed, for the words to which note (*a*), *supra*, refers have been held to create an exception to the general rule established by this section. Moreover, the law as to suing members of local boards and officers was altered by the Public Health (Officers) Act, 1884, and the Public Health (Members and Officers) Act, 1885, *post*.

A chairman of a local board was charged with an offence under the P. H. A., 1848, s. 28, which corresponds with r. 68 of Sched. II. of this Act. The prosecutor, though a member of the board, had not been a candidate at the election. It was held that he was not a party aggrieved so as to be able to institute the proceedings without the consent of the Attorney-General (*R.* v. *Blanshard* (1866), 30 J. P. 280).

By Sched. II., r. 69 (now repealed by the L. G. A., 1894), a penalty was imposed upon any one fabricating a voting paper. The appellant was one of two candidates for election to a local board and was in a minority of five at the close af the poll. The respondents were charged with fabricating a voting paper for three votes in favour of the successful candidate. It was held that the appellant was a party aggrieved within the section. *Per* LUSH, J.: "Independently of any consideration of the effect of a fabricated vote upon the result of any election, any candidate is

aggrieved by the fabrication of a vote within the meaning of the Act" (*Verdin* v. *Wray* (1877), 2 Q. B. D. 608; 41 J. P. 484). **Note to Section 253.**

In *R.* v. *Garratt* (1884), 12 Q. B. D. 620; 48 J. P. 357, the mortgagee of licensed premises was held to be a person aggrieved by the refusal of justices to renew the licence on account of his pecuniary interest in the premises. *Query*, whether the principle of this decision would apply so as to enable mortgagees to take proceedings under this Act in respect of offences causing injury to their property. See also *Moss* v. *Hancock*, [1899] 2 Q. B. 111; 63 J. P. 517, and *Ex parte Stott*, [1916] 1 K. B. 7; 80 J. P. 169, where it was held that the bailor of a cinematograph film was not an aggrieved party as regards a notice of objection to the film given by justices acting under a condition attached to the licence for the exhibition of the film.

In *Harring* v. *Stockton* (*Mayor of*) (1867), 31 J. P. 420, it was held that the surveyor of a corporation might lay an information under the P. H. A., 1848, though he was not authorised to do so by writing under seal.

"A party aggrieved is not brought into existence by the statute which gives him a penalty: he is a person who is supposed to exist, and the statute is passed on account of his grievance, and the action for the penalty is given to him": *per* BRAMWELL, L.J., in *Robinson* v. *Currey* (1881), 7 Q. B. D., at p. 470; see also *Drapers Company* v. *Haddon* (1892), 57 J. P. 200; 9 T. L. R. 36.

An association of retail dealers, many of whom dealt in tollable articles in a place in which the Markets and Fairs Clauses Act, 1847, was applicable under s. 167, *ante*, p. 385, were held entitled by their servant to take proceedings as a party aggrieved within the meaning of the text for the recovery of penalties for selling tollable articles in that place contrary to s. 13 of the Markets and Fairs Clauses Act, 1847 (*Ross* v. *Taylerson* (1898), 62 J. P. 181).

An inspector of mines who had laid an information under the Coal Mines Regulation Act, 1887, which was dismissed, was held to be a person aggrieved within the meaning of the S. J. A., 1879, s. 33 (*Stokes* v. *Mitcheson*, [1902] 1 K. B. 857; 66 J. P. 615).

In *Hilton* v. *Hopwood* (1899), 34 L. J. N. 667, it was held that the owner of a cottage situate at a distance of almost six miles from the chimneys of a factory which emitted black smoke was not a party aggrieved within the meaning of the text, although the court of summary jurisdiction had found as a fact that her property was damaged by the smoke generally, though not particularly on the days charged in the summons.

A district superintendent of police can lay an information under the Towns Police Clauses Act, 1847, s. 28, although not a party aggrieved nor authorised by the local authority (*Jobson* v. *Henderson* (1900), 64 J. P. 425; 82 L. T. 260).

The appellant, who was chief ranger of Burnham Beeches, and had general power to prosecute on behalf of the corporation of London for offences against the byelaws, laid an information against the respondents "on behalf of the mayor and corporation of the City of London" under the Malicious Damage Act, 1861, s. 22, for damage to a holly tree in Burnham Beeches which belonged to the corporation. No resolution of the corporation authorising the prosecution was produced, and the justices dismissed the information on the ground that the prosecution had not proved by proper documentary evidence that the proceedings had been instituted by a duly constituted attorney of the corporation. It was held, that as any person could prosecute in such a case, and as the words "on behalf, etc.," could either be regarded as surplusage or be taken as meaning that the information was laid by the appellant because the tree was the property of the corporation and he was their officer, the case must be remitted to the justices (*Duchesne* v. *Finch* (1912), 76 J. P. 377; 107 L. T. 412). See also *Giebler* v. *Manning*, [1906] 1 K. B. 709; 70 J. P. 181; *Lake* v. *Smith* (1912), 76 J P. 71.

(*c*) In an action where the Attorney-General's consent is required, it would appear to be necessary to allege in the statement of claim that his consent has been obtained. See *Hollis* v. *Marshall*, *ante*, p. 560. As to the procedure for obtaining the consent of the Attorney-General, see Garrett on Nuisances, 2nd ed., pp. 360—362, Daniel's Chancery Forms, 5th ed., by Burney, p. 33. Consent of Attorney-General.

(*d*) See ss. 108, 115, *ante*, pp. 208, 217. In these cases there can be strictly no person aggrieved, and the authority which would institute the proceedings is not the authority of the district.

Section 254. Application of penalties.

254. Where the application of a penalty under this Act (*z*) is not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed (*a*): Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

(*z*) See the P. H. A., 1907, s. 6, in first note to s. 253, *ante*, p. 559.

(*a*) But for this provision penalties would have been payable to the treasurer of the county, borough, etc., under the S. J. A., 1848, s. 31, and the Justices Clerks Act, 1877, s. 6.

The provisions of section 5 of the Criminal Justice Administration Act, 1914, as to the payment and allocation of fines and fees should be referred to, and also the provisions of s. 34 (6) of the same Act as to accounting by a clerk to justices for fines.

The Municipal Corporations Act, 1882, s. 221, provides that where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices, and payable to the Crown or to any borough corporate, or to any person whomsoever, the same if recovered before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough; but this section is not to apply to any fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered, if passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund. The present Act is, therefore, within the later part of the section.

The following cases may be referred to for the purpose of elucidating the text: *Seamen's Hospital Society* v. *Liverpool (Mayor of)* (1849), 4 Ex. 180; 18 L. J. Ex. 371; *Wray* v. *Ellis* (1858), 1 El. & Bl. 276; 22 J. P. 800; *Receiver of Metropolitan Police District* v. *Bell* (1872), L. R. 7 Q. B. 433; 37 J. P. 55; *Att.-Gen.* v. *Moore* (1878), 3 Ex. D. 276; 42 J. P. 372; *Alison* v. *Hall* (1888), 4 T. L. R. 524; *R.* v. *Titterton, Ex parte Quelch*, [1895] 2 Q. B. 61; 59 J. P. 327; *R.* v. *Yorkshire (West Riding) JJ.*, [1900] 1 Q. B. 291.

As to the payment into the Police Fund of fines awarded to police constables (being common informers), see the Penalties (Application) Act, 1850, s. 1; the Police Pensions Act, 1921, Sch. II.; *Alison* v. *Charlesworth* (1885), 49 J. P. 294; *Alison* v. *Hall*, *supra*.

Proceedings in certain cases against nuisances.

255. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to such court may appear fair and reasonable (*a*).

Proceedings against several persons included in one complaint shall

not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included. Section 255.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description (*b*).

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law (*c*).

(*a*) Sewage overflowing from the premises of the respondent and the premises of other persons ran some distance in the premises of A., where it accumulated and constituted a nuisance. Whilst it was upon the premises of the respondent and the others it was no nuisance, and became such only when it reached the premises of A.:—*Held*, that an order might be made on each party whose sewage assisted in causing the nuisance (*Hendon Union* (*Guardians of*) v. *Bowles* (1869), 34 J. P. 19; 20 L. T. 609). See also the cases cited in the notes to s. 94, *ante*, p. 176, especially *Brown* v. *Bussell* and *Scarborough* (*Mayor of*) v. *Scarborough R. S. A.*

Different persons whose independent acts amount to separate torts upon the plaintiff cannot be joined as defendants in one civil action (*Sadler* v. *G. W. Rail. Co.*, [1896] A. C. 450; *Munday* v. *South Metropolitan Electric Light Co., Ltd.* (1913), 29 T. L. R. 346).

(*b*) Notwithstanding this provision, it will be advisable to name the person who is subject to the process when he can be ascertained. It is to be observed that this provision is confined to nuisances, and is not of general application. See, however, *R.* v. *Mead*, [1894] 2 Q. B. 124; 58 J. P. 448.

(*c*) The law does not generally allow of contribution among wrongdoers. See *Merryweather* v. *Nixan* (1799), 8 T. R. 186; 1 Sm. L. C. (11th ed.) 398; *Betts* v. *Gibbins* (1834), 2 A. & E. 57; *Palmer* v. *Wick Steam Shipping Co.*, [1894] A. C. 318. Most of the cases as to nuisances arising under this Act are misfeasances or criminal acts of nonfeasance, and in such cases it would seem that the rule just mentioned would operate to prevent the recovering of contribution. There may, however, be cases in which contribution may be required.

Section 120 (1) of the Public Health (London) Act, 1891, is in similar terms to the first paragraph of this section, and s. 120 (3) provides that when some only of the persons by whose act or default, etc., have been proceeded against they shall, without prejudice to any other remedy, be entitled to recover in a summary manner from the other persons who were not proceeded against, a proportionate part of the costs of and incidental to such proceedings, and abating such nuisance and of any fine, etc. This section was considered under the following circumstances: The plaintiff and the defendants occupied adjoining houses, and the defendants had the right of sending sewage from their house through a pipe under the plaintiff's house into the main sewer. Twelve feet of this pipe was used solely to convey sewage from the defendants' premises. Proceedings under ss. 4, 5 of the London Act having been taken against the plaintiff for a nuisance arising from the said pipe being defective, and a magistrate's order obtained, the plaintiff did the required repairs to the pipe, including the said portion of twelve feet, and brought an action in the county court to recover contribution under s. 120 (3). The county court judge found that there was no evidence to show that the defendants were liable to repair or make good the drain, and therefore held that the nuisance was not caused by any act or default of the defendants, and gave judgment for them. It was held, on appeal, that, as there was no evidence of any obligation on the defendants to repair any portion of the pipe on the premises occupied by the plaintiff, the decision was right, and, *semble*, s. 120 of the London Act only applies when an order is obtained against one of several persons who might all have been proceeded against as responsible for causing the nuisance (*Nathan* v. *Rouse and Another*, [1905] 1 K. B. 527; 69 J. P. 135).

Section 256.

Summary proceedings for recovery of rates.

256. If any person assessed to any rate made under this Act (*a*) by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing (*b*), or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing (*b*), any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter (*c*).

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

(*a*) See ss. 209—217, *ante*, pp. 472—498.

It has been held that, notwithstanding the incorporation with this Act of the provisions of the Waterworks Clauses Act, 1847, as to the recovery of water rates, a water rent accrued due under an agreement for supply of water is a rate "made under this Act" within the meaning of this section, and that the period of limitation applicable to the recovery thereof commences to run on a failure to pay within fourteen days after demand thereof (*Elliott* v. *Russell*, [1902] 2 K. B. 748; 67 J. P. 158)

Demand.

(*b*) As to the service of this demand, see s. 267, *post*, p. 593. A demand will, it is presumed, be sufficient if made by the collector of the rate.

Enforcement of payment.

(*c*) In the case of a poor rate, payment is enforced by distress and imprisonment under the Distress for Rates Act, 1849; such a rate is not a "civil debt" within the meaning of the S. J. A., 1879: see *R.* v. *Price* (1880), 5 Q. B. D. 300; 44 J. P. 248; *In re Allen*, [1894] 2 Q. B. 924; 59 J. P. 229; *Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, [1899] 1 Q. B. 273; 63 J. P. 100; *Atkins* v. *Hutton* (1910), 74 J. P. 329; 103 L. T. 514.

Duty of justices.

Formerly in enforcing payment of poor rates, justices were not a court of summary jurisdiction, seeing that they did not act under or by virtue of the Summary Jurisdiction Acts (*R.* v. *Price* (1880), 5 Q. B. D. 300; 44 J. P. 248—the latter is a *verbatim* report, and should be referred to). Since the passing of the S. J. A., 1884, s. 7 (repealed and re-enacted by the Interpretation Act, 1889, s. 13), justices are probably a court of summary jurisdiction when sitting to hear complaints for poor rates (see p. 36, *ante*); but this does not make poor rates civil debts (see cases *supra*). In the case of urban rates the text expressly provides for the making of an order by a court of summary jurisdiction, and urban rates are civil debts (*Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, *supra*). The section makes no provision for imprisonment in default of distress, but that defect is supplied by the S. J. A., 1848, s. 22, as amended by the S. J. A., 1879, ss. 6, 35, the effect of which is that in default of distress the defendant may be committed, but only upon proof of means given on judgment summons.

The provisions of this section are different from those contained in the corresponding P. H. A., 1848, s. 103, which provided that in case the defaulter failed to appear according to the exigency of the summons, or no sufficient cause for non-payment were shown, the justice might by warrant cause the rate to be levied by distress of the goods and chattels of the defaulter. With reference to this provision it was held that the section did not confer a discretionary power upon the justice, but that he was bound to act ministerially (*R.* v. *Newman* (1860), 29 L. J. M. C. 117; 6 Jur. (N.S.) 293). It was also decided that the justices could not, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate (*R.* v. *Derbyshire JJ.* (1855), 19 J. P. 772); nor as to the purpose to which the rate was to be applied (*Luton L. B.* v. *Davis* (1860), 29 L. J. M. C. 173; 24 J. P. 677; see also *Sandgate L. B.* v. *Pledge*, p. 567, *post*). In fact, the duties of justices resembled their duties in enforcing a poor rate.

In *Stirk* v. *Halifax Assessment Committee*, [1922] 1 K. B. 264, it was held that a valuation list which purported to amend the existing valuation of certain classes

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of property by an addition of 25 per cent. all round, was bad. But notwithstanding this it was held that the justices on a summons to enforce payment of the rate made on such list, had no jurisdiction to refuse to issue their distress warrant (*Shillito* v. *Hinchcliffe*, [1922] W. N., p. 149). But quære, Whether this applies to proceedings to enforce a general district rate, having regard to the provisions of the above section.

Notwithstanding the alteration in the text the justices, to a great extent at any rate, still act ministerially, and have not unfettered discretion to determine when rates are or are not paid; and it is for the urban authority to remit for poverty. See s. 225, *ante*, p. 506. As to whether justices can grant time to a ratepayer or order payment by instalments, see an article at 75 J. P. N. 193. The point appears to be doubtful. Reference should be made to the cases in the preceding paragraph and *infra*, and on p. 566, *post*, for decisions as to what defences are open to a ratepayer before justices: but it may be well to refer here to the language of JAMES, L.J., in *Ex parte Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263; "By the courtesy of Parliament when dealing with courts of justice, the word 'lawful' is used, but when it is said that it shall be lawful for the court to do a certain thing, it means that it shall be done, and it is in fact unlawful to do anything else." In *Julius* v. *Oxford* (*Bishop of*) (1880), 5 App. Cas. 214; 44 J. P. 600, Lord CAIRNS, L.C., said that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised."

As already stated, the "order" here required was a new provision, and was not required by the previous statute (*R.* v. *Tottenham L. B., Ex parte Perry* (1860), 24 J. P. 87; 1 L. T. 413). It was therefore held that justices in acting under that statute were not affected by the limitation of time imposed by the S. J. A., 1848, s. 11 (*Sweetman* v. *Guest* (1868), L. R. 3 Q. B. 262; 32 J. P. 212). The necessity for an order under the present section brings in the limit of time prescribed by the S. J. A., 1848, s. 11. That section takes effect in every case where upon a complaint a justice is authorised by law to make an order, and requires the complaint to be made within six calendar months from the time when the matter of such complaint arose. As (except in cases of "quitting") no ground for making a complaint arises till 14 days after demand, it would appear that complaint for these rates must be laid within a period of six months *plus* 14 days after they have been demanded, as required by this section (see *Elliott* v. *Russell*, on p. 133, *ante*). It is provided, however, by the Rates (Proceedings for Recovery) Act, 1914 (4 & 5 Geo. 5, c. 85), that s. 11 shall not apply to any proceedings for the recovery of any rate when the institution of the proceedings has been deferred by the rating authority for the purpose of allowing time to persons who by reason of circumstances attributable directly or indirectly to the War are temporarily unable to pay the rate. It should be observed that there is no limit of time within which a demand must be made (see *Keeton* v. *Sheffield Coal Co.* (1901), 70 L. J. K. B. 374; 65 J. P. 341). In this case, after the rate was demanded, the assessment was reduced, and thereupon an amended demand was made. It was held that the six months ran from the time of the amended, and not of the original, demand.

In *R.* v. *Hannam* (1886), 34 W. R. 355, the Court of Appeal held that on an application before justices for payment of a rate under this section, the rate being good on the face of it, and the property in respect of which the occupier is rated being within the district of the local authority, the justices' duty is merely ministerial, and they have no jurisdiction to inquire into the validity of the rate. The judgment of BOWEN, L.J., in this case is worthy of careful perusal, as stating in a concise form the chief exceptions to the general rule that justices are bound to enforce a rate good upon the face of it, *e.g.*, non-occupation (*R.* v. *Bradshaw* (1860), 2 El. & El. 836; *R.* v. *Bagshawe* (1896), 75 L. T. 513); and where the property is outside the district of the rating authority (*Walker* v. *G. W. Rail. Co.* (1859), 2 El. & El. 325; *Baglan Bay Tin Plate Co.* v. *John* (1895), 72 L. T. 805; but see *R.* v. *Jefferson* (1884), 48 J. P. 393); the Lord Justice reserved his opinion whether there would not be another exception in the case of an exemption from rating under a public general statute. As to this last point, see *Bates* v. *Plumstead Overseers* (1895), 64 L. J. M. C. 127; 59 J. P. 118; *Rayner* v. *Drewitt* (1900), 64 J. P. 567; 82 L. T. 718; and see also *Wixon* v. *Thomas*, [1911] 1 K. B. 43; 75 J. P. 58, where it was held that the

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fact of premises being in the occupation of the Crown may be accepted by justices as a reason for not enforcing a poor rate. A dispute as to the liability of a railway company under their special Act to make good a deficiency of rates may be entertained (*Overseers of St. Stephen, Coleman Street* v. *Great Northern and City Rail. Co.* (1902), 86 L. T. 390; 66 J. P. 373). See also on this subject, articles at 78 J. P. N. 301, 315.

In *Whenman* v. *Clark*, [1916] 1 K. B. 94; 80 J. P. 128, it was held that a Court of Summary Jurisdiction (upon an application to them for an order for payment under this section) has jurisdiction to entertain the question whether the occupier by reason of a public Act is exempt from being rated, the facts not being in dispute. And *per* SWINFEN EADY and PICKFORD, L.JJ.: it is a good working rule, provided there is no dispute as to facts, that justices upon such an application have jurisdiction to entertain a defence that the defendant ought not to have been rated at all, or, if rateable at all, ought not to be rated upon the full rateable value. Reference might be made to an interesting discussion upon the last mentioned decision in *Stevenson* v. *Orr*, [1916] 2 I. R. 619.

Where there is occupation of part only of the property rated the remedy is by appeal against the rate, and justices must as a rule issue a warrant to enforce payment (*Manchester* (*Overseers of*) v. *Headlam* (1888), 21 Q. B. D. 96; 52 J. P. 517). The test appears to be whether it is possible to satisfy the description in the rate book without including property not occupied by the defendant (*Margate Corporation* v. *Pettman* (1912), 106 L. T. 104; 76 J. P. 145). See also *Langford* v. *Cole* (1910), 102 L. T. 808; 74 J. P. 229, and *Curzon* v. *Westminster Corporation* (1916), 80 J. P. 468; 14 L. G. R. 1112, in both of which cases, the ratepayer not being in occupation of the whole of the property rated, it was held that a distress warrant ought not to have been issued.

In cases arising out of "passive resistance," it has been held that where a ratepayer tenders a portion of a poor rate which is refused, and the amount tendered is again tendered before the justices and again refused by the overseers, the justices have a discretion whether they will issue a distress warrant for the whole rate or require the overseers to accept the sum tendered, and issue a warrant for the balance (*R.* v. *Gillespie*, [1904] 1 K. B. 174; 68 J. P. 11; *Ex parte Wyles* (1903), 73 L. J. K. B. 112 n.; 68 J. P. 13).

In *Sheffield Waterworks Co.* v. *Mayor, etc. of Sheffield* (1885), 55 L. J. M. C. 40; 50 J. P. 6, the respondents summoned the appellants to recover payment of a general district rate on certain property of the appellants. The rate was made, as regards some of the appellants' property on the basis of a supplemental valuation list, and as regards the remainder on the basis of the valuations on which the previous rates had been made. After the rate had been demanded and before the summons was issued, the assessment committee reduced the net rateable value of the hereditaments and premises occupied by the appellants:—*Held*, that sufficient cause was shown for non-payment of the rate within the meaning of this section. The court distinguished *Sandgate L. B.* v. *Pledge*, *post*, p. 567, on the ground that in that case the validity of the rate was sought to be impeached, while here only a wrong amount had been demanded. It is obvious, therefore, that in similar cases an authority ought to amend their rates under s. 221, *ante*, p. 503, and proceed only for the reduced amount.

For a case in which it was held that sufficient cause had been shown by overseers as regards precepts served upon them by the guardians, see *Tynemouth Union* (*Guardians of*) v. *Backworth* (*Overseers of*), cited in the notes to s. 231, *ante*, p. 519. It would seem that an owner may show cause if summoned for rates as an owner under s. 211 by proving that the rated premises are assessed at a sum greater than the prescribed amount, and that therefore the occupier is rateable (*Norwood* (*Overseers of*) v. *Salter*, [1892] 2 Q. B. 118; 56 J. P. 535).

The fact that the property rated was at a distance of three miles from any of the paving, lighting, or drainage for which the rate was made, was held to be no sufficient cause for non-payment (*Newport* (*Mayor, etc. of*) v. *Lang* (1892), 57 J. P. 199).

After a poor rate and a district rate had been made, a ratepayer gave notice to the assessment committee of an objection to his assessment. After hearing the objection the committee raised his assessment, and amended demands were served claiming rates upon such increased assessment. The ratepayer paid the amounts originally named in the rates and originally demanded. It was held that the committee had no power to increase the assessment, and that a distress warrant for the balance was properly refused (*Hudson* v. *Rhodes*, [1909] 1 K. B. 85; 73 J. P. 66).

In *Rochdale Building Society* v. *Mayor, etc. of Rochdale* (1886), 51 J. P. 134,

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commissioners made a rate in 1876 on P., an owner, for improvement expenses, and he paid part thereof and died. At the date of the rate P. had executed a mortgage to B., who entered into possession in 1882. In 1885 the justices issued a distress warrant against B. for the unpaid rate made on P. :—*Held*, that the justices had no power to issue a distress warrant against B., who was not named in the rate.

In January, 1907, upon an appeal against a general district rate made by the Thornton U. D. C., the Court of Appeal held that the B. & F. Tramway Co. were rateable in respect of their tramroad upon one-fourth only of its value, and this decision was subsequently affirmed (see p. 489, *ante*). In June, 1907, a neighbouring urban council made a district rate in which they rated another portion of the same tramroad at its full value and demanded payment. On a summons to enforce payment the company contended that they were liable to pay on one-fourth part only of the net annual value of the tramroad, and that a distress warrant should not be granted for the full amount. The justices held that the company had shown sufficient cause for non-payment of the full amount, and they reduced the rate and made an order for the reduced amount, which was demanded and paid. The council obtained a special case but withdrew it owing to failure to comply with the C. O. rules. A rule *nisi* was then obtained calling upon the justices to show cause why they should not hear and determine an application for the issue of a distress warrant for the full amount of the rate. It was held that, whether the justices were or were not entitled to make an order for a less amount than that appearing on the face of the rate, the court would not in the circumstances issue a *mandamus* to them to issue a distress warrant for the full amount (*R.* v. *Shuttleworth and Others* (1908), 72 J. P. 329). In June, 1908, the same council made another rate, rating the tramroad at one-fourth only. On a summons to enforce payment of this rate (£447), it was proved that whilst the company's original appeal (begun in 1904) against the Thornton U. D. C. claiming to be rated as a railway was pending, the council now concerned made rates in 1905 and 1906, in which the company were rated in full for the tramroad, and not at one-fourth, which would have reduced their liability from £1,056 to £596. It was also proved that in August, 1905, the council undertook to refund to the company the difference, if they were successful in their appeal. The company consequently paid the full amount of £1,056, and had thus made an over-payment of £460. It was held, that they had shown sufficient cause for non-payment of the rate dated June, 1908 (*Blackpool and Fleetwood Tramway Co., Ltd.* v. *Bispham-with-Norbreck U. D. C.*, [1910] 1 K. B. 592; 74 J. P. 141). In July, 1907, a third urban council made general and special improvement rates in which they rated another portion of the same tramroad at the full value instead of at one-fourth. The company, relying on the decision in the *Thornton U. D. C. Case*, claimed to pay only on one-fourth; and it was held that sufficient cause had been shown to justify the bench in refusing a distress warrant for the full amount (*Dixon* v. *Blackpool & Fleetwood Tramway Co.*, [1909] 1 K. B. 860; 73 J. P. 219).

As to the recovery of a number of local rates of different kinds in the same summons, see the Poor Rates Recovery Act, 1862; the P. H. A., 1890, s. 8, *post*; the P. H. A., 1907, s. 8, *post*, and *R.* v. *Glover* (1900), 35 L. J. N. 269, where it was held that a poor rate and general district rate could be included in one summons.

For a case where damages were recovered for wrongful distress put in after payment in pursuance of an order, see *Mutton* v. *Hornsey U. D. C.*, Times, April 15th, 1899; and see *Atkins* v. *Hutton* (1910), 74 J. P. 329, as to the civil liability of a landlord who, having agreed with his tenant to pay the rates, fails to do so, with the result that the tenant is imprisoned. See also on this point *Reigate Corporation* v. *Wilkinson* (1920), 84 J. P. 17.

It would seem that an appeal to quarter sessions against the order lies under s. 269, *post*, p. 599. In the case of a poor rate an appeal lies against the levy of distress but not before actual levy against the issuing of the warrant (*R.* v. *London JJ., Ex parte Bayne*, [1899] 1 Q. B. 532; 63 J. P. 388; *R.* v. *Lindsey JJ.* [1912] 2 K. B. 413; 76 J. P. 311).

A special case may be stated by justices under the S. J. A., 1879, s. 33, upon an application to enforce payment of a general district rate under this section. Where, however, a rate is good upon the face of it, the justices may not refuse to make an order for payment on the ground that there is a concurrent rate made for the same purpose (*Sandgate L. B.* v. *Pledge* (1885), 14 Q. B. D. 730; 49 J. P. 342).

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An application to a court of summary jurisdiction for an order to enforce payment of a general district rate under the text is not a criminal cause or matter, and therefore an appeal lies to the Court of Appeal from the judgment of the High Court upon a case stated by the court of summary jurisdiction (*Southwark and Vauxhall Water Co.* v. *Hampton U. D. C.*, [1899] 1 Q. B. 273 ; 63 J. P. 100).

By s. 33 of the Criminal Justice Administration Act, 1914, the provisions of the Summary Jurisdiction Acts, relating to the backing of warrants, and of s. 41 of the Summary Jurisdiction Act, 1879, relating to the proof of service of documents, and of the handwriting and seal on documents, shall apply to the proceedings in respect of the non-payment of any rate.

By the Bills of Sale Act, 1882, s. 14, a bill of sale is no protection against the seizure of goods for poor and parochial rates. But the general district rate of an urban authority is not a tax or poor or other parochial rate within the meaning of that section (*Richards* v. *Kidderminster Overseers*, [1896] 2 Ch. 212). It had previously been held that the section did not apply where proceedings had been taken in the county court under s. 261, *post*, p. 581 (*Wimbledon L. B.* v. *Underwood*, [1892] 1 Q. B. 836 ; 56 J. P. 633). For a case where, upon a distress for rates, it was held that there had been a bonâ fide sale of chattels, and that a document was not a bill of sale, see *Prudential Mortgage Co., Ltd.* v. *Marylebone Borough Council* (1909), 8 L. G. R. 901. As to the recovery of rates upon tithe rent-charge, see the Tithe Act, 1891, s. 6, and *Roberts* v. *Potts ; Jones* v. *Cooke*, [1894] 1 Q. B. 213 ; 58 J. P. 333. And see also the Ecclesiastical Tithe Rent-charge (Rates) Act, 1920. As to the recovery of rates in case of bankruptcy or liquidation, see Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59) s. 33, and the Companies Act, 1908, in App. I., *post*, Vol. II.

An assistant overseer has no authority to accept payment of poor rates in the form of bills of exchange accepted by the ratepayer ; and a ratepayer cannot plead payment if the assistant overseer applies such bills to his own purposes (*Smith* v. *Barham* (1887), 51 J. P. 581). By fraudulently representing that a rate had been made, an assistant overseer obtained from the respondents payment of the amount of the imaginary rate. He paid the amount into his banking account, and then out of it transferred to the overseers, in payment of prior rates previously collected from other ratepayers, but not accounted for, a sum nearly as large as the sum paid to him by the respondents. A rate for the period in respect of which the respondents had made the payment was subsequently made, the amount due from the respondents being the same as that already paid by them. On an application by the overseers against the respondents for a distress warrant on the ground of non-payment of the rate, the justices found that the overseers had received the proceeds or the greater part of the proceeds of the payment made by the respondents, and refused to issue a distress warrant. It was held, that there was no evidence that the respondents had paid the rate in question, and that the justices were not, on the ground of payment, entitled to refuse to issue a warrant (*Hornchurch Overseers* v. *L. T. and S. Rail. Co.* (1912), 76 J. P. 385 ; 107 L. T. 293).

Where a person was induced, by a false statement that rates had been made and were due, to pay money to a rate collector by cheque crossed generally and marked not negotiable, and the collector cashed such cheque at a bank where he had been in the habit of cashing cheques for rates, but where he had no account, it was held that the bank was not protected by the Bills of Exchange Act, 1882, s. 82, and were liable for the amount of the cheque to the person defrauded (*G. W. Rail. Co.* v. *London and County Banking Co.*, [1901] A. C. 414). See further as to this point the notes to s. 195, p. 461, *ante*.

Recovery of expenses by local authority from owners.

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act (*a*) or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate (*b*) not exceeding five pounds per centum per annum, from the date of service of a demand for the same (*c*) till payment thereof, from any person who is the owner (*d*) of such premises when the works are completed for which such expenses have been

incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred (*e*). In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand (*f*). Section 257.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same (*g*).

The local authority may, by order (*h*), declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner (*i*) from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act (*k*).

(*a*) See ss. 23, 36, 41, 62, 150, 158, *ante*. See also various sections of subsequent Acts which are to be read with this Act, *e.g.*, the P. H. A., 1890, ss. 19, 35; the Private Street Works Act, 1892, s. 13, etc.

(*b*) It is not clear who is to settle the amount of this rate. Probably the justices or the court. The owner cannot claim to deduct income tax from the interest (*Gateshead Corporation* v. *Lumsden*, [1914] 2 K. B. 883; 78 J. P. 283).

(*c*) This supplies an omission in previous legislation, which was referred to in *Wallingford* (or *Wallington*) v. *Willes* (1864), 16 C. B. (N.S.) 797; 33 L. J. M. C. 233, as to the commencement of the interest. As to what is a sufficient demand, see *Wilson* v. *Bolton Corporation* (1872), L. R. 7 Q. B. 105.

(*d*) See the definition of *owner* in s. 4, *ante*, p. 8. And see *R.* v. *Swindon L. B.*, and other cases cited therewith on pp. 310, 311.

As to summary proceedings for the recovery of paving expenses under s. 150, see that section and the notes thereunder at pp. 286 *et seq.*, *ante*.

(*e*) Though the owner is personally liable in so far as summary proceedings may be taken against him, yet the words of the text, which make the expenses a charge on the premises, do not create a personal liability. Accordingly the Court of Appeal refused leave to prove for them in an administration action (*West* v. *Downman*, *ante*, p. 305).

Remedies of local authority: Charge.

This section "imposes a charge on the premises immediately the expenses have been incurred, and there is no limitation of time during which that charge is to remain effective. The condition upon which the charge is made to arise is nothing but this, 'where the local board have incurred expenses for the repayment whereof the owner is made liable.' Directly, therefore, the local board have incurred such expenses, the section must be read as if immediately after that, there came these words, 'such expenses shall be a charge on the premises.' Therefore, directly from the moment the expenses which are named in that section have been incurred, such expenses are a charge on the premises, that is, the charge is imposed then and there by the statute. Moreover, the phrase is grammatically a phrase of addition, because the earlier part of the section names the other remedies to which the board may resort, and it adds the words 'and such expenses shall be a charge on the premises.' Therefore, it seems to me that, upon the reading of that section, this is a charge the moment the expenses are incurred, and it is a charge which exists although other remedies exist at the same moment that that commences, or other

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remedies may by different processes be made to arise either as against the owner, who is, in the first place, the person liable, or as against other persons. It is true that the owner is liable to another remedy the moment the expenses have been incurred which he ought to have defrayed himself. There is a remedy against him personally for the whole sum, which remedy is to be enforced within six months; but if the board claim the whole payment from him at once, yet fail to recover it from him personally, and there are no means of recovering it from him by distress, or if they pass by the personal remedy, then, if they have done nothing to prevent them from putting the charge into effect, I see no reason why the charge might not then and there be put into effect for the whole sum as against the owner. But the board has also the power of causing other remedies as against other persons to arise. They may declare the expenses to be private improvement expenses (see ss. 150, 213). That is the first resolution which they may pass. Having done that, they may deal with that in one of two ways. Having declared the expenses to be private improvement expenses, they may make a private improvement rate, and if they do so, they at once have a remedy against the occupier, and they may distrain upon the occupier, and the occupier is given a remedy over against the owner to a certain extent. If they do make a private improvement rate, they can only put their remedies upon that rate into effect under what are called Jervis's Acts; and if they do attempt to put their remedy into effect against the occupier they are at once as against him limited in time. They may not only attempt to use the summary remedy, but, as it was said, may, up to a certain amount, sue in the county court, and then the decision in *Tottenham L. B.* v. *Rowell* (1876), 1 Ex. D. 514, which, if I may venture to say so, was perfectly right, is that the same limit of time applies. But that limit only affects remedies which they have as against the occupier or owner personally by summary proceedings. Well, having declared those expenses to be private improvement expenses, there is another mode in which they may deal with it. They may come to a resolution that the whole sum shall be divided into instalments and spread over a certain number of years, not exceeding thirty. If they do that, that at once gives them remedies against the occupier and against the owner. Having made the sum payable by instalments, I incline to agree that it makes the Act more reasonable and more fair, to say that they could not retract that and insist, either by putting the charge into effect or otherwise, upon an immediate payment of the whole. Having once made the sum payable by instalments, it must so remain; but then, it being payable by instalments, they have a summary remedy against the occupier or against the owner as each instalment falls due. Although they have all these remedies they may be ineffectual, because the occupier may be unable to pay, the owner may be unable to pay, there may not be sufficient to enable them to recover by distress; all those remedies may fail, but if they do fail, it seems to me that there is nothing which, upon the failure of these remedies, has done away with that charge, which existed from the beginning, and which is not limited in time upon the arising of any condition subsequent by any words in the Act from the beginning to the end; but when the payment has come to be payment by instalments, then I think that if the charge is to be made effective it could only be made effective for instalments in arrear. . . . All the remedies which are either existing at the time when the charge takes effect, or which are, by following the forms of the statute, made to arise after the charge has taken effect, have nothing to do with the charge—they make it neither greater nor less. If these remedies fail, or are not put into effect, nevertheless the charge which exists absolutely independent of them, may always be made effective by the process of the court, and there is no limitation of time as to that, except, I suppose, the ordinary Statutes of Limitation": *per* BRETT, L.J., in *Tottenham L. B.* v. *Rowell* (1880), 15 Ch. D. 378.

Time for enforcing charge

The period of limitation within which an action to enforce a charge on the premises must be brought, is twelve years (Real Property Limitation Act, 1874, s. 8); and the time begins to run from the date of the completion of the works, not from the date of the apportionment (*Hornsey L. B.* v. *Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391).

Time when charge takes effect.

The charge takes effect on the completion of the works. See *Tottenham L. B.* v. *Rowell*, *supra*, and *Newcastle-upon-Tyne* (*Mayor, etc. of*) v. *Houseman* (1898), 63 J. P. 85. Leasehold houses in an urban district abutting partly on a private

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road were sold under an open contract. At the date of the sale works had been done by the local board under s. 150; the final demand for payment of the sums apportioned in respect of the premises was served after the purchase ought to have been completed. It was held that as between the vendor and purchaser the expenses were payable by the vendor (*Re Bettesworth and Richer's Contract* (1888), 37 Ch. D. 535; 52 J. P. 740). It was otherwise held in the metropolis, for there the expenses are not charged on the premises (*Egg* v. *Blayney* (1888), 21 Q. B. D. 107; 52 J. P. 517; and see *Re Field*, W. N. (1888), p. 36). The charge given by the Private Street Works Act, 1892, s. 13, *post*, like that under the text, takes effect on the completion of the works. If, therefore, premises are sold by the owner free from incumbrances after the completion of the works but before the date of final apportionment, the vendor must indemnify the purchaser against the sum finally apportioned in respect of the premises (*Stock* v. *Meakin*, [1900] 1 Ch. 683). This case was followed in *Surtees* v. *Woodhouse*, [1903] 1 K. B. 396; 67 J. P. 232, under the following circumstances: By a covenant in a lease the lessee covenanted that he would during the term pay and bear all present and future rates, etc., charged upon the demised premises, or the owner or occupier in respect thereof. It was held that the covenant did not apply to expenses incurred under the Act of 1892, which had become a charge on the completion of the works before the date of the commencement of the term granted by the lease, but which were not payable until after that date. This decision was followed in *Lumby* v. *Faupel* (1904), 68 J. P. 265; 90 L. T. 140. *Stock* v. *Meakin*, *supra*, was distinguished in a case as to a "betterment" charge under a London Improvement Act. See *Re Farrer and Gilbert's Contract*, [1914] 1 Ch. 125.

In *In re Allen and Driscoll's Contract*, [1904] 2 Ch. 226; 68 J. P. 469, the question as to the date when the charge takes effect again came up for consideration, it being argued that the point did not expressly arise in any of the above cases. The Court of Appeal held, however, that it was in each of those cases essential for the court to determine that date, and it was again held that expenses become a charge on the premises in respect of which they are incurred "as from the date of the completion of the works."

By the leases of two houses abutting on a private road, the lessee covenanted to pay all rates and taxes and to keep up the road. In 1882, the lessee executed a deed of gift of the two houses to his son upon trust for the father for life, he paying "all outgoings and performing the covenants in the leases," and after his death upon trust for the son absolutely. In 1884 the local board served notices on the father under s. 150, requiring him to make up the portions of the road on which the houses abutted; but the notice was not complied with, and the board themselves did the work, which was completed in February, 1885. In June, 1885, the father died, and the son entered into possession of the houses. In 1886 the son was served with notices of apportionment of the expenses, and in 1887 with demands and orders for payment of the assessed amounts by instalments, with interest:—*Held*, in an action by the son claiming repayment out of his father's estate—(1) that the expenses were not a debt due from the father's estate, inasmuch as the relation of debtor and creditor was not created by the P. H. A., 1875, between the board and an owner of property for expenses incurred by the board; and (2) that the charge of the expenses under s. 257 could not be recovered by the son against the estate of the tenant for life (*In re Boor, Boor* v. *Hopkins* (1889), 40 Ch. D. 572; 53 J. P. 467). With the above decisions upon the point as to when a charge under s. 257 takes effect may be contrasted *Tubbs* v. *Wynne*, *ante*, p. 197, where, default having been made in complying with a magistrate's order under the Metropolitan Building Acts, it was held that the expenses of the works became a liability from the date of the magistrate's order. And see *In re Barney, Harrison* v. *Barney*, at p. 190, *ante*.

Charge affects total ownership.

The charge is one, not on the interest of any particular owner of the premises, but on the total ownership, that is to say, on the respective interest of every owner for the time being in proportion to the value of his interest. Therefore, where the owner of leasehold premises had mortgaged them for the full term less a nominal reversion, it was held that the mortgagee was liable, and JESSEL, M.R., declared the sum claimed with interest to be a charge on the mortgagee's interest in the premises (*Birmingham (Corporation of)* v. *Baker* (1881), 17 Ch. D. 782; 46 J. P. 52).

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For a case under a local Act where an owner was required to attend in chambers for examination as to other charges on the property and a writ of attachment was issued on his failure to do so, see *Tottenham U. D. C.* v. *Neilson & Co.* (1915), 79 J. P. 504.

The word "owner" in s. 150 and in the above section does not include a person who has the benefit of a covenant restricting the use of the premises in respect of which expenses for street improvements have been incurred. Therefore where an authority had obtained a charge under this section on a piece of land which was subject to a covenant restricting the owner thereof from building on it, it was held that they were not entitled to an order for sale of the land free from such restrictive covenant. The court distinguished *Birmingham (Corporation of)* v. *Baker*, *ante*, p. 571 (*Tendring Union (Guardians of)* v. *Dowton*, [1891] 3 Ch. 265).

Under the School Sites Act, 1841, s. 6, a piece of land was conveyed in the form given in s. 10 to trustees for ever for the purposes of the Act as a site for a national school and for no other purpose whatever; and a national school was afterwards erected upon it. The local authority under s. 150 made up a street on part of which the school premises abutted, and served the trustees with notice to pay the apportioned expenses. It was held by the Court of Appeal that the trustees were liable for these expenses as "owners" within the meaning of the Act, and that therefore the expenses were until recovery thereof a charge on the premises under s. 257, but that the authority could not enforce the charge by order for sale since such an order would be a contravention of the School Sites Act, 1841 (*Hornsey U. D. C.* v. *Smith*, [1897] 1 Ch. 843).

Incidence of costs.

Where a tenant for life has paid the expenses out of his own pocket he is entitled to keep the charge alive in his own favour, and to raise the amount by mortgage of the settled land under the Settled Land Act, 1890, s. 11 (*In re Smith's Settled Estates*, [1901] 1 Ch. 689). See also as to the incidence of the cost of drainage and paving expenses as regards settled estates, the notes to s. 104. For a case under a local Act relating to an improvement charge as to which an apportionment was claimed as between freehold and leasehold interests, see *Holborn and Frascati, Ltd.* v. *L. C. C.* (1916), 80 J. P. 225; 14 L. G. R. 538.

Action to enforce charge: service of process where owner unknown.

A local authority, being unable to find an owner in default under s. 150, purported to commence an action in the county court to enforce their charge. In their plaint note they described the defendant as "the owner of plot, No. 188, Canning Road, W." An order for substituted service on the defendant by advertisement was then obtained on an affidavit by the plaintiffs' surveyor that he had made repeated efforts, but had failed, to ascertain the present owner of the plot, and that notices of apportionment and of a demand for payment had been posted on the land. Subsequently an order was made that the expenses and interest were a charge upon the land, and that the plaintiffs were to be at liberty to sell the premises, and a further order was made declaring that upon such sale the owner of the plot should be a trustee for the purchaser within the meaning of the Trustee Act, 1893, and that the plaintiffs be appointed to convey the land for the estate of the said owner. A purchaser objected to the title and refused to complete. It was held that the order for substituted service and the orders based thereon were bad (*Wealdstone U. D. C.* v. *Evershed* (1905), 69 J. P. 258; 3 L. G. R. 722).

Jurisdiction of High Court.

It was held by the Court of Appeal that an action could not be maintained in the High Court to enforce a charge under this section for a sum less than £10 (*Westbury-on-Severn R. S. A.* v. *Meredith* (1885), 30 Ch. D. 387).

Notice under s. 150 a condition precedent.

The plaintiffs incurred expenses in paving a street without having served a notice under s. 150 upon the then owners of certain premises. Subsequently they brought an action against the defendants, the present owners, to enforce a charge upon the premises under this section. It was proved that B., a predecessor in title of the defendants, had taken from the plaintiffs a receipt for payment of an instalment of the same expenses. It was held that the plaintiffs were not entitled to the declaration claimed, for service of the notice was a condition precedent to liability on the part of the defendants, and the payment by B. could not operate as a waiver of the omission (*Farnworth L. B.* v. *Compton* (1886), 34 W. R. 334; and see *Bacup (Corporation of)* v. *Smith* (1890), 44 Ch. D. 395; *Hackett* v. *Smith*, [1917] 2 I. R. 508).

See also *Bristol Corporation* v. *Sinnott*, noted at p. 303, *ante*, where a claim for a charge failed because of the insufficiency of the preliminary notice.

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It was held that the charge might be enforced against an owner of premises for the time being, although he was not the owner at the time the works were completed, and although the authority had omitted to enforce their summary remedy against the then owner (*Sunderland (Mayor of)* v. *Alcock* (1882), 51 L. J. Ch. 546); and see *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72; 56 J. P. 773; as to the liability of a purchaser in respect of a charge under 50 & 51 Vict. c. 21, s. 4 (in App. I., *post*, Vol. II.), for arrears of water rates.

Charge continues on premises in hands of owner "for the time being."

In 1879 the owner of premises abutting on H. street and E. street, Blackburn, mortgaged them to the defendant. In 1880 the plaintiff corporation paved H. street, and in 1881 the mortgagor, in accordance with the provisions of the Blackburn Improvement Act, 1870, executed a charge on the premises in favour of the corporation for the payment by instalments of his share of the expenses. In 1882, and prior to the commencement of the Blackburn Improvement Act, 1882, the corporation paved E. street; and in 1883 the mortgagor further charged his premises, in accordance with the Act of 1882, with the payment by instalments of the expenses. The mortgagor made default in payment of the instalments, and on his death in 1883 the defendant took possession of the premises under his mortgage. In an action by the corporation against him to recover the unpaid instalments under s. 247 of their Act of 1882, which entitles the corporation to institute an action at law against "successive owners" of premises for the recovery of the expenses of paving streets, it was held that the defendant, being mortgagee in possession, was a "successive owner"; that the execution of a charge in favour of the corporation did not preclude them from their remedy by action; and that the Act of 1882 was applicable to the recovery of expenses incurred prior to its commencement (*Blackburn Corporation* v. *Micklethwait* (1886), 50 J. P. 550; 54 L. T. 539).

Recovery under local Act against successive owners.

On the hearing of a summons for expenses under s. 150, the defendant contended that the sewer was not one for which owners could be made liable, that the road was a highway, and that it was not a street. The magistrate dismissed the summons, but it did not appear on what ground. Afterwards the surveyor made a new apportionment, under which the sum apportioned as the defendant's share was less than that formerly claimed. The local board brought an action under s. 257 to have the sum declared a charge on the premises. The court gave judgment for the plaintiffs for the amount of the second apportionment. They held that they were not estopped by the magistrate's decision, as the grounds of it did not appear; that the magistrate had not, as was suggested, jurisdiction to finally decide whether the street was a highway (*R.* v. *Hutchins*, *ante*, p. 294), and that there was power to make a second apportionment (*Manchester (Mayor and Corporation of)* v. *Hampson* (1886), 3 T. L. R. 466; 35 W. R. 334). The Court of Appeal agreed that there was no estoppel, the matter not being *res judicata*, and that the surveyor had power to make a new apportionment; they, however, ordered a new trial on defendant's counsel stating that they had evidence to show that the street was a highway repairable by the inhabitants at large (35 W. R. 591).

By a special Act, which was to be read together with the P. H. A., 1875, as one Act, a local authority were empowered to apportion the "estimated expenses" of sewering, paving, and other works in a street among frontagers, and recover the expenses so apportioned either before the work was commenced, during its progress, or after its completion, by action at law or summary proceedings, and if the actual expenses were less than the estimated sum, the difference was to be paid to the frontagers who had paid such sum, or whose property might have been "charged therewith":—*Held*, that the right conferred by s. 257 of the P. H. A., 1875, to charge the property of frontagers with expenses incurred was not, by virtue of the above provisions of the special Act, extended to estimated expenses (*Mayor, etc. of West Ham* v. *Grant* (1888), 40 Ch. D. 331).

The expenses in respect of which a charge is given by this section are not land charges within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act (*R.* v. *Land Registry (Vice-Registrar of)* (1889), 24 Q. B. D. 178; 54 J. P. 120). But where the Private Street Works Act, 1892, has been adopted, a register of charges under that Act must be kept by the authority: see *ibid.*, s. 13 (2), *post*, p. 884.

Registration of charges.

(*f*) As to the limitation of time for summary proceedings, see note (*l*) to s. 150, *ante*, at p. 305. But there is no limitation of the time within which a demand must

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be made (*Wortley* v. *St. Mary, Islington* (*Vestry of*) (1886), 51 J. P. 166; *Hampstead Borough Council* v. *Caunt*, [1903] 2 K. B. 1; 67 J. P. 344).

It is only upon this notice that the board can recover summarily, and that appeal lies to the M. of H. under s. 268, *post*, p. 595. See *per* BRETT, L.J., in *R.* v. *Local Government Board*, in notes to s. 268, *post*, at p. 596.

Conclusiveness of apportionment.

(*g*) With reference to the conclusive character of the apportionment, see *Cook* v. *Ipswich L. B.*, *ante*, p. 306; *Shanklin L. B.* v. *Millar*, *ante*, p. 311; *Tunbridge Wells L. B.* v. *Akroyd*, *ante*, p. 313; *Hesketh* v. *Atherton L. B.*, *ante*, p. 306; *Manchester* (*Mayor of*) v. *Hampson*, *ante*, p. 311; *Sandgate L. B.* v. *Keene*, *ante*, p. 312. From these cases it would seem that failure to dispute the apportionment does not prevent the owner, when before the justices, from disputing his liability *in toto*, but that where his objection is only to part of the sum apportioned, so that there is jurisdiction as to the residue, that objection can only be taken by way of objection to the apportionment under this section. See *per* SMITH, J., in *Bournemouth Commissioners* v. *Watts*, *ante*, p. 307; *Midland Rail. Co.* v. *Watton*, *ante*, p. 307. In the latter case it was held that when the apportionment has not been disputed, it is no answer to summary proceedings that the defendant has been charged in respect of a greater extent of frontage than he possesses. And see also *Eccles* v. *Wirral Sanitary Authority*, *ante*, p. 306.

This dispute is to be settled by arbitration. See s. 150, note (*o*), *ante*, p. 312, as to arbitrations arising under that section.

In *Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511; 79 J. P. 201, an apportionment had been made under s. 150 to which a frontager gave notice of objection whereupon the local authority appointed an arbitrator. The frontager did not appoint an arbitrator within fourteen days as required by s. 180 (*ante*), but within that time withdrew his objection disputing the apportionment. The arbitration then proceeded *ex parte* and upon an action to set aside the award it was held that a frontager who had not appointed an arbitrator to act for him was entitled to withdraw his notice disputing the apportionment within fourteen days. The arbitrator had therefore no power to act and the award was a nullity.

Non-applicability of paragraph if no apportionment necessary.

Where no apportionment is necessary, *e.g.*, where expenses have been incurred by an authority under the Towns Improvement Clauses Act, 1847, s. 75, in erecting a hoarding in front of a dangerous building, the second paragraph of s. 257 as to the time for disputing apportionments has no application (*Usk U. D. C.* v. *Mortimer* (1903), 90 L. T. 25; 68 J. P. 38. See also *Bower* v. *Caistor R. D. C.* (1911), 75 J. P. 186).

Order for instalments.

(*h*) This is an alternative provision to that in s. 213, which deals with private improvement rates. That section enables an authority to make a rate on the occupier for these expenses. This section enables the authority to make an order on the owner for the same, and to charge the amount on the premises, the amount to be payable by annual instalments, and the rate of interest to be settled by themselves. It would seem that the authority must in the first instance decide which course they will adopt (see *Wilson* v. *Bolton* (*Mayor of*), *ante*, p. 314), but their decision will not affect their right to enforce the charge on the premises created by the first paragraph of the section, at any rate in respect of payments due and in arrear: see the judgment of BRETT, L.J., in note (*e*), *supra*.

An urban authority, after giving notice to N. to pave, etc., a new street, did the work at a cost of £4,758, to defray which they borrowed, with the sanction of the L. G. B., money at 4 per cent. The sum apportioned on N. was £2,412, and the authority duly resolved to make the sum payable by instalments during twenty years with interest at £5 per cent. On non-payment of an instalment by N.:—*Held*, the justices were right in enforcing payment, and were not bound to allow the objection that the authority charged higher interest than they themselves paid (*N. B. Rail. Co.* v. *Holme Cultram L. B.* (1889), 54 J. P. 86).

Recovery of instalments.

(*i*) See s. 251, *ante*, p. 551.

There must apparently be a fresh demand for each instalment, and the six months' limitation will run from such demand. See *Prescott* v. *Nicholson* (1889), 53 J. P. 597. As to enforcing the charge on the premises in respect of unpaid instalments, see the judgment in *Tottenham L. B.* v. *Rowell*, *ante*, p. 308.

Deduction from rent.

(*k*) See s. 214, *ante*, p. 494.

258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

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Justices may act though members of local authority or liable to contribute.

A justice may be disqualified for dealing with a matter either by pecuniary interest, or by interest other than pecuniary if it is such as to create a real possibility of bias in him. As to what amounts to pecuniary interest, see *R.* v. *Cambridge* (*Recorder*) (1857), 8 E. & B. 637; 27 L. J. 160; *R.* v. *Cheltenham* (1841), 1 Q. B. 467; *R.* v. *Rishton* (1813), 1 Q. B. 479 n.; *R.* v. *Hammond* (1863), 27 J. P. 793; 9 L. T. 423; *R.* v. *Mackenzie*, [1892] 2 Q. B. 519; 56 J. P. 712; *R.* v. *Burton*, *post*, p. 577; *Wildridge* v. *Anderson* (1898), 25 R. 275; *R.* v. *London JJ.* (1908), 72 J. P. 137; 98 L. T. 519; *R.* v. *Middlesex JJ.* (1908), 72 J. P. 251; 52 Sol. J. 458. This section removes the disqualification on the ground of bias, which would otherwise arise from membership of a local authority, party to the proceedings, and also the disqualification arising from pecuniary interest to the extent therein appearing. It does not, however, as appears from the following cases, enable a justice to act in cases where he has, as a member of the local authority, taken part in setting the law in motion.

Interested justices.

H., the owner of a farm in Edmonton, entered into an agreement with the Enfield Local Board, under which he received the sewage of the Enfield district, and disposed of it over his farm. After a few months disagreements arose, and the Enfield board took proceedings against H. to enforce the agreement. While these were pending, H., after notice given to the board, diverted the sewage from his farm through a pipe into the old watercourse in Edmonton, through which the sewage had been used to flow into the river Lee. On this the Edmonton Local Board threatened proceedings against the Enfield board for the nuisance; and the Lee Conservancy took out summonses against H. for having opened the pipe into the watercourse, etc., and for continuing the use of it. On the summonses coming on for hearing, M., who was chairman of the Enfield board, and had taken an active part in its proceedings, sat with three other justices on the bench. H. objected to M. sitting, but he remained, and H. was convicted. A rule for a *certiorari* was then obtained to quash the conviction, on the ground that M. was an interested justice. On showing cause M. made affidavit that, though he sat on the bench, he took no part until the other justices had unanimously determined to convict, when he proposed a mitigation of the penalties, and that he did not sign the conviction:—*Held*, that M. had such an interest as might give him a real bias in the matter; consequently, he ought not to have sat as a justice, and it was immaterial what part he really took in the matter; and the court made the rule absolute with costs against M. (*R.* v. *Meyer* (or *Harrison*) (1875), 1 Q. B. D. 173; 40 J. P. 645). See also *R.* v. *Lancashire JJ.* (1906), 75 L. J. K. B. 198; 70 J. P. 337, where it was held that the mere presence of disqualified justices on the bench at quarter sessions, even though they took no part in the proceedings, rendered the proceedings irregular, and the appeal was directed to be reheard. In *R.* v. *Spurgeon and Others* (1920), 42 M. C. C. 176, the Divisional Court discharged a rule for a *certiorari*. The interested justice remained on the bench, but sat back from the other justices and took no part in the proceedings.

Complaint having been made to the L. G. B. of a nuisance upon premises belonging to B., in the borough of W., the Board called upon the town council to abate the nuisance. The council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two of the justices present were members of the council when the resolution was passed:—*Held*, that the councillors who were justices had such an interest as might give them a bias in the matter; that, consequently, they ought not to have sat as justices on the hearing of the summons, and that the rule for a *certiorari* to quash the order must be made absolute (*R.* v. *Milledge* (or *Weymouth JJ.*) (1879), 4 Q. B. D. 332; 43 J. P. 606). But where justices who were members of a town council, and as such had taken an active part in making an order under the Dogs Act, 1871, sat to hear

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a complaint of non-observance of the order, it was held they had no such interest in the subject-matter of the complaint as to oust their jurisdiction (*R.* v. *Huntingdon JJ.* (1879), 4 Q. B. D. 522; 43 J. P. 767). It will be observed that in this case the justices had not taken any part in ordering the prosecution. Upon this ground the decision in *Harring* v. *Stockton* (*Mayor of*) (1867), 31 J. P. 420, may be supported.

By a borough improvement Act, the corporation was made the authority for its execution, with power to direct prosecutions for that purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice, who as an alderman was a member of the council, but it came on for hearing before county justices, none of whom were connected with the corporation. It was held that the justices could not properly proceed with the hearing, as the summons had been issued by one who was virtually a prosecutor (*R.* v. *Gibbon* (or *Lancashire JJ.*) (1880), 6 Q. B. D. 168). This decision was disapproved in *R.* v. *Handsley* (or *Burnley JJ.*) (1881), 8 Q. B. D. 383; 46 J. P. 119. In that case it was laid down that where by statute a member of a town council may act as a justice in matters arising under the Act, in order to disqualify him from acting, it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is a member are the prosecutors, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. An officer of a corporation appointed to collect the borough rate obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but upon his own responsibility, and without consulting the council. At the hearing the justices dismissed the summons on the ground that one of the sitting magistrates, being a town councillor, was thereby disqualified from adjudicating. On motion for a *mandamus*, it was held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification (*cf. R.* v. *Pettitmangin* (1864), 33 L. J. M. C. 99 n.). Where a justice was a member of a town council, and was present when a prosecution for selling unsound meat was resolved upon, it was held that he was disqualified from sitting to hear the summons (*R.* v. *Lee* (1882), 9 Q. B. D. 394; 47 J. P. 118). So also where a justice had been a member of a committee appointed to report upon certain mining pollutions, and had acted upon such committee, he was held disqualified from hearing a summons for polluting the stream, though he had not actually taken part in ordering the prosecution (*R.* v. *Spalding* (or *Spedding*) (1885), 49 J. P. 804; 2 T. L. R. 163). In an Irish case where a person was convicted for obstructing a highway on two separate occasions, one of the justices who adjudicated was a member of the finance committee of the county, and also a cesspayer. The complainant was the district surveyor, an officer of the grand jury, having statutory duty of reporting generally on the state of all roads, the name and description of persons prosecuted by him for any injury to roads or like offences, the result of such prosecutions, and generally on all matters given in charge to him by the finance committee. The first prosecution was undertaken in obedience to a direction from the finance committee, but the second on his own responsibility. The justice in question when adjudicating was not aware of the direction above-mentioned:—*Held*, that he was not disqualified either as a member of the committee or as a cesspayer (*R.* v. *Dublin County JJ.*, [1894] 2 I. R. 527).

As to disqualification on grounds other than pecuniary interest, the true question is whether the relation of the impugned member to the inquiry is such that he can be reasonably suspected of bias. This rule was laid down by the Court of Appeal in *Allinson* v. *General Medical Council*, [1894] 1 Q. B. 750; 58 J. P. 542. There an inquiry before the General Medical Council whether the plaintiff, a medical practitioner, had been guilty of infamous conduct in a professional respect, so as to entitle the Council to erase his name from the register, was instituted at the instance of the committee of the Medical Defence Union, whose objects were "to support and protect the character and interests of medical practitioners; to promote honourable practice; and to suppress or prosecute unauthorised practitioners." One member of the Council who took part in the inquiry had been a member and vice-president of the Union, and as vice-president was an *ex officio* member of its committee. He had, however, never attended any meeting of the committee, and until after he had been elected a member of the Council did not know that proceedings were being

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taken against the plaintiff. He had sent in his resignation as a member of the Union on the same day on which he was elected a member of the Council. By the articles of association of the Union any member might withdraw by giving two months' notice of his intention. Before such two months had expired the inquiry was held. It was held that the member was not disqualified from taking part in the inquiry. For an earlier case in which MELLOR, J., laid down the rule, see *R.* v. *Allan* (1864), 4 B. & S. 915; and *cf. R.* v. *Tyrone JJ.*, [1909] 2 I. R. 763.

In proceedings taken at the instance of the council of the Incorporated Law Society against an unqualified person for acting as a solicitor, it was held that a justice was not disqualified from adjudicating by reason of the fact that he was a member of the society (*R.* v. *Burton*, [1897] 2 Q. B. 468; 61 J. P. 727). *Cf. R.* v. *Deal JJ.* (1881), 46 J. P. 71; 45 L. T. 439 (a prosecution for cruelty to animals); *Ex parte Chamberlain* (1870), 34 J. P. 773.

The Fishery Act, 1865, s. 61, contains a provision similar to that in the text. A justice who was also a member of the board of conservators of a fishery district was present at a meeting of the board, at which a resolution was unanimously passed directing the water bailiff to prosecute a person for violation of certain provisions of the Fishery Acts. He took no prominent part in the proceedings, but his name appeared as being present at the meeting when the resolution was passed. He afterwards sat with others to hear the charge, and the offender was convicted. It was held that the disqualification otherwise attaching to the justice by reason of his having acted as a member of the board authorising the prosecution, was not removed by s. 61 of the Fishery Act, 1865, and that the conviction must therefore be quashed (*R.* v. *Henley*, [1892] 1 Q. B. 504; 56 J. P. 391). In a similar case of a prosecution by a fishery committee, a justice who was a member of the committee afterwards sat on the bench when the case was heard. The court quashed the conviction, though the justice deposed that he had taken no part in the case, and only retired with his brother magistrates out of curiosity; and they intimated that in future they might award costs against any justice so offending (*Harvey* v. *Gibb* (1892), Times, May 17th).

The interest which is sufficient to disqualify need not be a direct interest. Thus, at a special sessions for appeals against poor rates the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on, he left the bench, and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them:—*Held*, that the chairman being a litigant in a matter similar to the other matters before the court, was disqualified from acting as a justice, and that the orders were bad (*R.* v. *Great Yarmouth JJ.* (1882), 8 Q. B. D. 525; 46 J. P. 148). *Cf. Ex parte Nantwich U. D. C.* (1899), Times, November 18th, where a justice who had been himself served with notice to provide a water-closet under s. 36, protested against it and expressed his intention of sitting on the hearing of a summons against another householder for default in complying with a similar notice. On application for a prohibition the court expressed an opinion that he ought not to sit. A member of a Nonconformist council which was opposed to the renewal of licences was present at a meeting of that council at which it was resolved to oppose the transfer of a licence; but he had, it was stated, left the meeting before the resolution was passed. It was held that he was incapable of sitting as a justice at the hearing of the application for the transfer, and the proceedings were quashed (*R.* v. *Fraser* (1893), 9 T. L. R. 613). Upon the hearing of a summons under the Merchant Shipping Act, 1854, s. 361, a justice who was a qualified pilot belonging to the pilotage district within which the alleged offence was committed was held, by reason of his membership of the class in whose interests the proceedings were taken, to be disqualified from acting as a justice, even though by reason of the peculiar nature of his own pilotage work he was not actually brought into competition with unqualified pilots (*R.* v. *Huggins*, [1895] 1 Q. B. 563; 59 J. P. 104).

The fact that a justice has strong views on the subject appertaining to the offence of which a defendant is charged does not disqualify such justice (*Ex parte Wilder* (1902), 66 J. P. 761). For cases where justices have made statements as to the matters in issue, see *R.* v. *Alcock* (1878), 42 J. P. 311; 37 L. T. 829; *R.* v. *Halifax JJ.*, *Ex parte Robinson* (1912), 76 J. P. 233; 28 T. L. R. 288; *R.* v. *Cork JJ.* (1911),

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45 Ir. L. T. 3. For cases of alleged personal *animus*, see *R.* v. *Cork JJ.*, [1910] 2 I. R. 271; *R.* v. *Cork JJ.*, [1910] 2 I. R. 658; *R.* v. *Tyrone JJ.*, [1909] 2 I. R. 763.

Where a justice is shown to have taken an active part in defending an appeal against a decision of which he approves, but to which he was no party, he is disqualified on the ground of possibility of bias from taking part in deciding the appeal (*R.* v. *Cumberland JJ.* (1888), 52 J. P. 502; 58 L. T. 491). *Cf. R.* v. *Great Yarmouth* (1836), 5 L. J. M. C. 73. At a vestry meeting, summoned by a district surveyor to consider (*inter alia*) the obstruction of a highway by the defendant, who had deposited a heap of earth by the side of a highway, a justice moved a resolution calling upon the defendant to remove the heap. The defendant having failed to do so a summons was taken out against him by the surveyor for depositing the heap to the obstruction of the highway, and for failing to remove it after notice. The justice, who had moved the resolution, and who was a ratepayer of the parish, sat and adjudicated with another justice, and made an order directing the heap to be removed and sold, and the proceeds to be applied to the repair of the highway:—*Held*, that the justice was disqualified from adjudicating, for the part taken by him in moving the resolution afforded ground for a reasonable suspicion of bias on his part, though there might not have been bias in fact, and upon the further ground that as a ratepayer he was pecuniarily interested in the result of the summons (*R.* v. *Gaisford*, [1892] 1 Q. B. 381; 56 J. P. 247). The second ground of this decision is, however, open to question, for it appears to lose sight of s. 2 of the Justices of the Peace Act, 1867, *post*, p. 579. The fact that a *subpœna* to give evidence in a particular case has been served upon a magistrate is not of itself sufficient to disqualify him from hearing and adjudicating upon such case (*R.* v. *Tooke* (1884), 48 J. P. 661; 32 W. R. 753). A justice, who was a surgeon, attended a patient professionally for injury caused by an assault. He endeavoured to induce his patient not to prosecute for the assault, and conveyed to him a message from the assailant offering an apology and suggesting a settlement. A summons having been issued for the assault, and the justice having been subpœnaed by the prosecution, a prohibition was obtained to prohibit him from sitting at the hearing. The justice moved to set aside the prohibition, and it was held that his acts did not show that he had such a substantial interest in the result as to make it likely that he had a bias, and that the fact of his being subpœnaed did not disqualify him from sitting; the prohibition was therefore set aside (*R.* v. *Farrant* (1887), 20 Q. B. D. 58; 52 J. P. 116). See also *R.* v. *Tyrone JJ.* (1911), 45 Ir. L. T. 264, and *cf. Fobbing Commissioners* v. *R.* (1886), 11 App. Cas. 449; 51 J. P. 227. And see *Mitchell* v. *Croydon JJ.* (1914), 78 J. P. 385.

The mere fact of receipt of a circular sent round to justices particularly requesting their attendance at a certain sessions at which certain business will be taken without asking them to vote in any particular way does not disqualify such justices (*R.* v. *London JJ.*, *Ex parte Kerfoot* (1896), 60 J. P. 726; 45 W. R. 58).

Certain licensing cases in which the question of bias on the part of justices has been raised may also be referred to. In *R.* v. *Stockport JJ.* (1896), 60 J. P. 552, the corporation of S., who had acquired a licensed house for purposes of improvement, appointed an alderman a member of a committee for the purpose of negotiating for the disposal of the house. The result of these negotiations was an arrangement that application should be made for a licence for other premises, and the sale was effected on the condition that the licence for these "other" premises should be obtained. The alderman had sat as a member of the licensing committee on the hearing of the application for the grant of the new licence, and it was sought to upset the decision on the ground of bias. The Divisional Court thought that there was no real ground on which to quash the decision; but this case was soon afterwards expressly overruled in *R.* v. *Sunderland JJ.*, [1901] 2 K. B. 357; 65 J. P. 598, where the facts were similar. A corporation had bought a publichouse for a street improvement, and then entered into an agreement with a firm of brewers, by which the brewers agreed that if they obtained a new licence for a publichouse in another street they would pay the corporation £10,000 on condition that the corporation closed the publichouse which they had purchased. Certain members of the corporation who had taken an active part in negotiating the agreement sat as justices both on the licensing committee and at the confirming meeting when the new licence was granted. In the Divisional Court a rule *nisi* for a *certiorari* was discharged, but the Court of Appeal reversed their decision on the ground that in their opinion there

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was a real likelihood of bias. In a still more recent case the Court of Appeal granted a writ of *certiorari* where it was alleged that upon applications for the renewal of certain licences the licensing justices had acted pursuant to an arrangement previously entered into with the corporation of Leeds, who were the owners of the premises, and did not properly consider objections made to the renewal of the licences (*R.* v. *Woodhouse, Ex parte Ryder*, [1906] 2 K. B. 501; 70 J. P. 485). On appeal however, this decision was reversed on the ground that the justices were entitled to act as they had done (*Leeds Corporation* v. *Ryder*, [1907] A. C. 420; 71 J. P. 484). For decisions as to bias in other licensing cases, see also *R.* v. *Fraser* (1893), 57 J. P. 500 n.; 9 T. L. R. 613; *R.* v. *Ferguson* (1890), 54 J. P. 101; *R.* v. *Hain* (1896), 12 T. L. R. 323; *R.* v. *Taylor, Ex parte Vogwill* (1898), 14 T. L. R. 185; *R.* v. *Gee* (1901), 17 T. L. R. 374; *R.* v. *Tempest* (1902), 66 J. P. 472; 86 L. T. 585; *R.* v. *Howard* (or *Farnham JJ.*), [1902] 2 K. B. 363; 66 J. P. 579; *R.* v. *Dublin JJ.*, [1904] 2 I. R. 75; *Goodall* v. *Bilsland*, [1909] S. C. 1152; *R.* v. *Halifax JJ.*, p. 577, *ante*; *McGeehen* v. *Knox*, [1913] S. C. 688. Three cases relating to rating appeals in which attempts to disqualify justices on the ground of possibility of bias failed might also be noticed: *R.* v. *Suffolk JJ.*, Estates Gazette, May 19th, 1906; *R.* v. *London JJ.* (1908), 72 J. P. 137; *R.* v. *Middlesex JJ.* (1908), 72 J. P. 251.

There is no restriction here as in 16 Geo. 2, c. 18, as to the justice acting at quarter sessions.

By the Justices of the Peace Act, 1867, s. 2, in order that justices may act in the execution of Acts in some cases in which they would otherwise be incapable of acting, it is provided that a justice shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go. See *R.* v. *Bolingbroke*, [1893] 2 Q. B. 347; 58 J. P. 118; *Ex parte Workington Overseers*, [1894] 1 Q. B. 416; 58 J. P. 381.

"Acting."

As to what amounts to acting, see *R.* v. *Middlesex JJ.* (1854), 2 W. R. 459; *R.* v. *Surrey JJ.* (1856), 4 W. R. 86; *R.* v. *Herefordshire JJ.* (1844), 2 D. & L. 500 n.; *R.* v. *Hertfordshire JJ.* (1845), 6 Q. B. 753; 14 L. J. M. C. 73; *R.* v. *Suffolk JJ.* (1852), 18 Q. B. 416; 21 L. J. M. C. 169; *R.* v. *London JJ.* (1852), 18 Q. B. 421 n.; *R.* v. *Meyer, ante*, p. 575; *R.* v. *O'Grady* (1857), 7 Cox C. C. 247; *Ex parte Clarke* (1890), 26 L. R. Ir. 1; *R.* v. *Budden* (1896), 60 J. P. 166; *R.* v. *London C. C.*, [1892] 1 Q. B. 190; 56 J. P. 8; *R.* v. *Louth JJ.* (1904), 39 Ir. L. T. 23; *R.* v. *Lancashire JJ.* (1906), 75 L. J. K. B. 198; 70 J. P. 337; *R.* v. *Byles* (1913), 77 J. P. 40; 108 L. T. 270; *R.* v. *Armagh JJ.*, [1913] 2 I. R. 410.

Waiver objection.

Where a justice is disqualified on the ground of interest, it is open to the parties to waive the objection. If they acquiesce in his acting after knowledge of the disqualification, they cannot afterwards object; and knowledge of the disqualification must be denied in the affidavit. See *R.* v. *Richmond JJ.* (1860), 24 J. P. 422; 8 W. R. 562; *Ex parte Ilchester* (1861), 25 J. P. 56; *R.* v. *Kent JJ.* (1880), 44 J. P. 298; *Wakefield L. B.* v. *West Riding and Grimsby Rail. Co.* (1865), L. R. 1 Q. B. 84; 30 J. P. 628; *R.* v. *Antrim JJ.*, [1895] 2 I. R. 603; *R.* v. *Byles, supra*; *R.* v. *Williams*, [1914] 1 K. B. 608; 78 J. P. 148. A magistrate who invites the parties to waive any objection to his acting must explain accurately what his interest in the matter is (*R.* v. *Cumberland JJ.*, p. 578, *ante*).

If one disqualified justice takes part in a decision, it is vitiated no matter how many qualified justices agreed with it: see *R.* v. *Lancashire JJ.* and other cases, *supra*; but an acquittal by justices, one of whom is afterwards discovered to be disqualified, must stand (*R.* v. *Simpson* (1913), 78 J. P. 55; 30 T. L. R. 31). In *R.* v. *Hammond*, p. 575, *ante*, an order of sessions confirming on appeal a conviction made by interested justices was quashed with the conviction.

A justice cannot sit to hear an appeal against a decision of a court of which he was a member (*R.* v. *Lancashire JJ.*, *supra*; *R.* v. *Herts JJ.*, *supra*).

Section 259. Appearance of local authorities in legal proceedings.

259. Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

What is "appearance."

The appearance mentioned in this section refers to the appearance in court. It does not give the authority a right to be heard by their clerk where there is a rule of the court that parties are only to be heard by counsel (*R.* v. *London JJ.*, [1896] 1 Q. B. 659; 60 J. P. 420). The clerk may appear without any authority, but any other officer must have an authority, either given generally or for the special proceeding. Thus the inspector of nuisances may have such general authority, but it should be in writing, containing a copy of the resolution as entered in the minutes. 29 & 30 Vict. c. 90, s. 48, from which this section is taken, extended the provision in 18 & 19 Vict. c. 121, s. 5, which had restricted the appearance of the officer to the particular case in which directions had been given. See *Isle of Wight Ferry Co.* v. *Ryde Commissioners* (1861), 25 J. P. 454. Special authorisation is necessary however in every prosecution for penalties in respect of local taxation licenses transferred to county and borough Councils by the Finance Act, 1908 (*Jones* v. *Wilson*, [1918] 2 K. B. 36; 82 J. P. 277). In a case where justices refused to determine a complaint under the P. H. A., 1848, without the attendance of the clerk of the local board, the court refused to interfere (*Ex parte Leamington L. B.* (1862), 5 L. T. 637). It has been held that an inspector of weights and measures does not require a "specific consent" to enable him to prefer an information under the Weights and Measures Act, 1904, a general resolution of the authority consenting to his prosecuting any information, etc., arising under the Act, or in discharge of his duties as inspector, being all that is required by s. 14 of that Act (*Tyler* v. *Ferris*, [1906] 1 K. B. 94; 70 J. P. 88). It is apparently unnecessary that an officer prosecuting for an authority should be fortified with the resolution appointing him to the office (see *Smith* v. *Hirst* (1871), 35 J. P. 247; 23 L. T. 665). If an officers' statement that he is such officer is not questioned, no further proof of his appointment is necessary (*Ross* v. *Helm*, [1913] 3 K. B. 462). If in any case express proof is required it can be supplied by production of the minute book which contains a minute of the appointment. See Sched. I., Part I., r. 10, *post*, p. 674. If a defendant does not take the point before the justices that there has been no proved proof of authorisation of the officer to take the proceedings, the point cannot be taken upon a case stated upon other grounds (*Kates* v. *Jeffery*, [1914] 3 K. B. 160). In *Bowyer, Philpott & Payne* v. *Mather*, [1919] 1 K. B. 419; 83 J. P. 50, it was held that the authorisation of an officer after the institution of proceedings was insufficient, a general or special authority must be given before the proceedings are instituted by the laying of the information.

"Institution" of proceedings.

It has been questioned whether the word *institute* applies to notices of nuisances, and of other matters which may or may not be followed by proceedings in court. The better opinion appears to be in the negative. Proceedings are "instituted" by the laying of the information (*Thorpe* v. *Priestnall*, [1897] 1 Q. B. 159; 60 J. P. 821). In *St. Mellon's R. D. C.* v. *Edwards* (1903), 67 J. P. 396, Monmouthshire Quarter Sessions held to be valid a notice of appeal which was given by the clerk of a rural district council, but was subsequently ratified by a resolution of the council under seal approving and confirming the notice and authorising the clerk to enter into the necessary recognizance and to prosecute the appeal.

Delegation to police.

A local board passed a resolution that the superintendent and sergeants of the county police for the time being acting within the district should be authorised as officers of the board to institute and prosecute all such proceedings as might be necessary under specified clauses of a local Act which embodied the provisions of this section. It was held that the board had no power under this section to delegate prosecutions to members of the police, not being their officers or under their control (*Kyle* v. *Barber* (1888), 52 J. P. 725; 58 L. T. 229).

260. In any proceeding instituted by or aganist a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district (*a*) : Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed. Section 260. —— Name of local authority need not be proved.

(*a*) See *Fearon* v. *Warrenpoint* in note to the P. H. A., 1907, s. 94, *post*.

261. Proceedings for the recovery of demands below fifty pounds (*a*), which local authorities are empowered to recover in a summary manner (*b*), may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts (*c*). Demands below £50 may be recovered in county court.

(*a*) This is an increase of the limit in the statute 24 & 25 Vict. c. 61, s. 24.

(*b*) See s. 251, *ante*, p. 551. This section applies, therefore, only to sums which can be recovered summarily—not to those which can be recovered in other ways, as, for example, the costs, etc. to which s. 104, *ante*, p. 189, relates.

(*c*) The six months' limitation for summary proceedings is also applicable to the proceedings taken in the county court (*Tottenham L. B.* v. *Rowell* (1876), 1 Ex. D. 514 ; following *West Ham L. B.* v. *Maddams* (1876), 1 Ex. D. 516 n. ; 40 J. P. 470). The principle of these cases as applied to this particular Act has been since accepted ; but they were distinguished in *Leeds (Mayor, etc. of)* v. *Robshaw* (1887), 51 J. P. 441, a case under the Leeds Improvement Act, 1877. Section 96 of that Act provided that summary proceedings before justices for the recovery of expenses must be brought within one year, and s. 109 provided that when any person neglected to pay any sum due to the corporation, such sum might be recovered in any court of competent jurisdiction for the recovery of debts of the like amount. Other remedies were given for the recovery of these sums, one by an Act of 1842 by way of distress, in which there was no limit of time, and another by an Act of 1866 by action at law. It was held that the limitation of one year did not apply to proceedings by way of action of debt in the county court. They were again distinguished in the Court of Appeal in *Blackburn (Mayor, etc. of)* v. *Sanderson*, [1902] 1 K. B. 794 ; 66 J. P. 452, a case decided on a local improvement Act ; and again in *Metropolitan Water Board* v. *Bunn*, [1913] 3 K. B. 181 ; 77 J. P. 156, 353, and *Bolton Corporation* v. *Scott* (1913), 77 J. P. 193 ; 108 L. T. 406. *Hammersmith Vestry* v. *Lowenfeld*, [1896] 2 Q. B. 278 ; 60 J. P. 600, a case under the P. H. (London) A., 1891, in which they were applied to that statute, has been doubted, if not overruled (see *Metropolitan Water Board* v. *Bunn*, *supra*). Limitation of time in county court.

It would seem that if the authority take summary proceedings and fail, they could not afterwards bring an action in the county court, or vice versa (*Metropolitan Water Board* v. *Bunn*, *supra*). But the failure in either case does not affect their power in respect of the charge on the premises under s. 257. See the remarks of BRETT, L.J., in the notes to that section.

In *Eccles* v. *Wirral Sanitary Authority*, *ante*, p. 306, MATHEW, J., says : "By s. 261 jurisdiction is conferred on the county court in cases of this kind (*i.e.*, to recover expenses due under s. 150), and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above £50 an action would lie in the superior court." But this dictum appears to be contrary to the rule that where a debt is created by a statute which expressly provides for its recovery, the remedy so provided must be followed, and an action will not lie : see *St. Pancras Vestry* v. *Batterbury*, and other cases cited at p. 305, *ante*. And there are dicta in later cases that no action will lie in a superior court for the recovery of such expenses : see *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412 ; *In re Hanwell U. D. C. and Smith* (1904), 68 J. P. 496. Under the Private Street Works Act, 1892, s. 14, *post*, actions may be brought in any court of competent jurisdiction

Note to Section 261.

Application of Bills of Sale Act, 1882, to proceedings for recovery of general district rate.

By the Bills of Sale Act, 1882, s. 14, a bill of sale shall be no protection in respect of personal chattels included in such bill of sale, which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates. It was held that that section did not apply where proceedings for the recovery of a general district rate had been taken in the county court under the text (*Wimbledon L. B.* v. *Underwood*, [1892] 1 Q. B. 836; 56 J. P. 633). It has since been held that a general district rate is not a tax or poor or other parochial rate within the meaning of s. 14 (*Richards* v. *Kidderminster Overseers*, [1896] 2 Ch. 212).

Proceedings not to be quashed for want of form.

262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by certiorari or any other writ or process whatsoever into any of the superior courts (*a*): Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates (*b*).

When *certiorari* lies.

(*a*) For an instance of express exception, see s. 246, *ante*, p. 540. The Act does not contain any definition of the term "superior court," but the text evidently refers to the High Court of Justice. Apart from this provision, *certiorari* does not lie to remove other than judicial acts. See *R.* v. *Watermen's and Lightermen's Co.*, [1897] 1 Q. B. 659; 61 J. P. 388; *R.* v. *Sharman*, [1898] 1 Q. B. 578; 62 J. P. 296; *R.* v. *Bowman*, [1898] 1 Q. B. 663; 62 J. P. 374. The phrase "judicial act" must, however, be taken in a very wide sense, including many acts that would not ordinarily be termed "judicial." The true view of the limitation appears to be that the term "judicial act" is used in contrast with purely ministerial acts. See *Leeds Corporation* v. *Ryder*, *ante*, p. 579, when in the Court of Appeal (*sub nom.*, *R.* v. *Woodhouse*, *Ex parte Ryder*, [1906] 2 K. B. 501; 70 J. P. 485), in which case *R.* v. *Sharman*, *supra*, on this point, was not followed. See also *R.* v. *Dublin Corporation* (1878), 2 L. R. Ir. 371, where MAY, C.J., said: "It is established that the writ of *certiorari* does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection the term 'judicial' does not necessarily mean acts of a judge, or legal tribunal sitting for the determination of matters of law, but for the purpose of this question, a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others." This passage was cited with approval by PALLES, C.B., in *R.* v. *Kerry C. C.*, [1905] 2 I. R., at p. 303, and was adopted by the Irish Court of Appeal in *R.* v. *Local Government Board for Ireland*, [1902] 2 I. R. 349, where the difference between "judicial" and "ministerial" acts was elaborately discussed. See also *R.* v. *Dublin Corporation*, [1911] 2 I. R. 245, and *R.* v. *Doherty* (1910), 74 J. P. 304; 26 T. L. R. 502, where a warrant of commitment was quashed. The point was raised but not decided in *Ex parte Stott*, [1916] 1 K. B. 7, as to whether a notice prohibiting the exhibition of a film was a proper subject-matter for a *certiorari*.

Notwithstanding this provision, a writ of *certiorari* may be granted where the proceedings show on the face of them a want of jurisdiction (*R.* v. *Gosse* (1860), 3 El. & El. 277; 30 L. J. M. C. 41; *Re Broughton L. B.* (1865), 12 L. T. 310; *R.* v. *Staffordshire JJ.* (1867), 16 L. T. 430; *R.* v. *Rose* (or *Wood*), *ante*, p. 440; *R.* v. *Slater* (1903), 67 J. P. 299; *Colonial Bank of Australasia* v. *Willan* (1874), L. R. 5 P. C. 417). In the case last mentioned it was laid down that when a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or a manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached.

Note to Section 262.

Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try (*ibid.*). And see *Ex parte Bradlaugh* (1878), 3 Q. B. D. 509; 43 J. P. 125; *R.* v. *Bradford*, [1908] 1 K. B. 365; 72 J. P. 61; *R.* v. *Queen's County JJ.*, [1908] 2 I. R. 285; *Ex parte Stott*, [1916] 1 K. B. 7; 80 J. P. 169; cases cited in Paley on Convictions, 7th ed., at p. 354, and Short and Mellor's Crown Office Practice, 2nd ed., p. 43. See generally as to the effect of a clause taking away *certiorari*, *R.* v. *Mahony*, [1910] 2 I. R. 695.

Waiver of objection.

Where both parties agreed to waive a similar provision, and a recorder stated a case for the opinion of the court, the fact that the corresponding section in the Municipal Corporations Act, 1835, had taken away the *certiorari* was held not to prevent the court from determining the question (*R.* v. *Dickenson* (1857), 7 El. & Bl. 831; 22 J. P. 243).

Practice.

As to the practice relating to the removal of convictions, etc. by *certiorari*, see Paley on Convictions, 7th ed., Chap. V., sect. 2. See also the Crown Office Rules, 1906, Nos. 20—31. It was held that the six days' notice to the justice, under the old rules, as a preliminary to the grant of a writ of *certiorari*, must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute (*Ex parte Roberts* (1886), 50 J. P. 567). But it appears now from r. 21 of the new rules that the notice need only be given six days before the return day. An application for *certiorari* to the King's Bench Division does not lie after conviction and judgment in the superior court (*Nally* v. *R.* (1884), 16 L. R. Ir. 1).

The time limitation in r. 21 of the Crown Office Rules does not apply to the issue of a writ of *certiorari* at the instance of the Attorney-General on behalf of the Crown (*R.* v. *Amendt*, [1915] 2 K. B. 276; 79 J. P. 324).

Certiorari will not issue to quash a conviction by justices pending an appeal to quarter sessions (*R.* v. *Barnes* (1910), 74 J. P. 231; 102 L. T. 860).

Object of proviso.

(*b*) This proviso was inserted to meet the difficulties which arose in cases such as *R.* v. *Fielding* (1853), 17 J. P. 343; *R.* v. *Staffordshire JJ.* (1867), 16 L. T. 430; *R.* v. *Chantrell* (1875), L. R. 10 Q. B. 587; 39 J. P. 472. It is now rendered unnecessary, so far as regards cases stated by quarter sessions, for the S. J. A., 1879, s. 40, provides that a writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination for the purpose of obtaining the judgment of a superior court. In *Clark* v. *Alderbury Union* (1880), 29 W. R. 334, it was held that the provision rendered a *certiorari* unnecessary to bring up a case stated by sessions on a rating appeal, and that the clerk of the peace, on receiving notice from the solicitor of the party requiring it, should send up the case to the Crown Office. As to the recognizances in such a case, see the Crown Office Rules, 1906, Nos. 24—26.

False evidence punishable as perjury.

263. *Any person who on any examination on oath, under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.*

See now the Perjury Act, 1911, which repealed this section.

Notice of action against local authority, etc. [Repealed by 56 & 57 Vict. c. 61.]

264. *A writ or process shall not be sued out against or served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority member officer or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in*

Section 264. *the notice so served; and unless such notice is proved the jury shall find for the defendant.*

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere.

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the court, at any time before trial, pay into court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be non-suited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

Repealed by the Public Authorities Protection Act, 1893, *post*.

Protection of local authority and their officers from personal liability.

265. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into bonâ fide for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act (*a*).

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising (*b*).

Before dealing with the cases bearing directly on this section it may be mentioned that the common law provides a drastic remedy where libels are published in relation to the conduct of members of a local authority in the exercise of their duties. The High Court may in its discretion grant a criminal information to protect a person exercising a public official duty imposed upon him by statute, though he may not be acting in a judicial capacity, from a libel published of him in the exercise of that duty (*R.* v. *Russell* (1905), 69 J. P. 450; 93 L. T. 407).

A member of a council must not act as juryman in a case to which the council are parties (*Atkins* v. *Fulham Borough Council* (1915), 31 T. L. R. 564).

Effect of section.

(*a*) "The effect of clauses of this sort is not to leave a complaining party remediless, but to oblige him to bring his action against the public board or against the commissioners as a body. . . . And any damages that may be recovered will be payable out of the funds at their disposal under the provisions for payment for damages and costs" (Addison on Torts, 5th ed. p. 669). In similar clauses in other Acts, it is provided that the action shall be brought against the clerk. In such a case it has been held that the clerk is not liable personally (*Wormwell* v. *Hailstone* (1830), 8 L. J (o.s) C. P. 264; 6 Bing. 668; and see *Hall* v. *Smith* (1824), 3 L. J. (o s) C P. 263; 2 Bing. 156, 267; *Emery* v. *Day* (1834), 3 L. J. Ex. 307; 1 C. M. &

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R. 245; *Cane* v. *Chapman* (1836), 6 L. J. K. B. 49; 5 A. & E. 647). It may be observed, however, that *Wormwell* v. *Hailstone*, *supra*, was questioned in *Cobbett* v. *Wheeler* (1860), 3 El. & El. 358; 30 L. J. Q. B. 64; and *Hall* v. *Smith*, *supra*, discussed in *Scott* v. *Mayor, etc. of Manchester* (1857), 26 L. J. Ex. 406; 1 H. & N. 59; 2 H. & N. 204, and *Mersey Docks Trustees* v. *Gibbs* (1866), L. R. 1 H. L., at p. 115, *per* BLACKBURN, J. Under the present Act, the authority must be sued in their corporate name See s. 7, *ante*, p. 39. The effect of this section is, therefore, to exempt from personal liability everyone who has bonâ fide contracted with the local authority to do some act under their direction, though he may thereby cause damage to another person which the Act itself does not justify or excuse. Thus, where the defendants were contractors acting under the direction of the Metropolitan Commissioners of Sewers, and while so acting injured the plaintiff's premises, it was held that they were not liable (*Ward* v. *Lee* (1857), 21 J. P. 179; 7 El. & Bl. 426). In *Le Feuvre* v. *Miller* (1857), 21 J. P. 436; 8 El. & Bl. 321, a question was raised and argued whether a bailiff who executed a warrant of distress to enforce payment of a rate alleged to be illegal was within this section. The question was not decided, but the court seemed to be of opinion that the case was within the principle of *Ward* v. *Lee*; and see *Southampton and Itchin Floating Bridge Co.* v. *Southampton L. B.* (1858), 8 El. & Bl. 801; 27 L. J. Q. B. 128. But the effect of the section is not to relieve a contractor from liability for the negligence of himself or his servants. "Where there is no negligence, a party doing an act in obedience to the board of health is not liable—in that case he is very properly absolved, and the superior alone is liable; but if he is guilty of negligence in doing the act, and damage ensues, he is personally liable" (*per* Lord CAMPBELL, C.J., in *Arthy* v. *Coleman* (1857), 21 J. P. 771; 6 W. R. 34; and see *Jones* v. *Bird* (1822), 24 R. R. 579; 5 B. & A. 837; *Clothier* v. *Webster* (1862), 12 C. B. (N.S.) 790; 31 L. J. C. P. 316). But a person who contracts for works under a local authority is not liable for an injury which arises out of those works long after they are completed; for example, when after a sewer has been laid in a road by the contractor, there is a subsequent subsidence, it being the duty of the authority to look after such occurrences (*Hyams* v. *Webster* (1867), L. R. 2 Q. B. 264; 31 J. P. 439; and see *Smith* v. *West Derby L. B.*, *ante*, p. 261). The cases in which a contractor has been held liable are to some extent discussed in the notes to the Public Authorities Protection Act, 1893, *post*. In *Mill* v. *Hawker* (1875), L. R. 10 Ex. 92; 39 J. P. 181, a highway board directed their surveyor to break open a gate on a disputed highway; in an action of trespass by the landowners it was held that, assuming the plea of justification to fail, the surveyor would be personally liable, but not the clerk who merely wrote out the order. The Court of Exchequer also held that the individual members of the board would be liable and not the board as a body. The Court of Exchequer Chamber gave no decision on the point; but see *Campbell* v. *Paddington Borough Council*, [1911] 1 K. B. 869; 75 J. P. 277. In *Monks* v. *Dillon* (1883), 12 L. R. Ir. 321, works were executed by the contractor of a drainage board, pursuant to contract with them, and by their authority, under the superintendence of their engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, was frequently present on the ground, and saw the works in progress. Some of the works were admittedly acts of trespass to the plaintiffs' lands, as the board had not obtained an assessment of, or paid, compensation before entry. It was held that the engineer was liable for the trespass so committed.

Liability of local authority for negligence.

The effect of the rule, as above stated, is to render the local authority liable to be sued in respect of damages arising out of their negligence in omitting to cause proper precautions to be taken in the exercise of works which they order to be done. This was stated in *Ward* v. *Lee*, *supra*, and held in *Southampton and Itchin Floating Bridge Co.* v. *Southampton L. B.*, *supra*; and see *Fairbrother* v. *Bury Rural Sanitary Authority* (1889), 37 W. R. 544. In the latter case the authority were held liable to an action for so negligently and improperly constructing a sewer as to cause a nuisance by its discharge and an injury to the plaintiffs. Again, where a local board had ordered a new sewer to be constructed in their district, under a contract and plans which did not provide for a penstock or flap required to prevent the plaintiffs' premises from being flooded by the influx of a river through the sewer, and in consequence of such omission the premises were flooded and damaged, it was held that the board were liable (*Ruck* v. *Williams* (1858), 22 J. P. 420; 3 H. & N. 308). Where a cor-

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poration provided an improper machine in a washhouse, they were held liable for damage caused thereby (*Cowley* v. *Sunderland* (*Mayor of*) (1861), 25 J. P. 439; 6 H. & N. 565), and similarly as to a defective heating apparatus in a school (*Abbott* v. *Isham* (1921), 85 J. P. 30; 18 L. G. R. 719). The negligence must be the effective cause of the damage (*McDowall* v. *G. W. Rail. Co.*, [1903] 2 K. B. 331). But when injury is primarily caused by the negligence of the authority, the contributory negligence or wrong of a mere stranger is no defence (*Engelhart* v. *Farrant*, [1897] 1 Q. B. 240; *Sullivan* v. *Creed*, [1904] 2 I. R. 317; *cf. McDowall* v. *G. W. Rail. Co.*, *supra*; *Ely Brewery Co.* v. *Pontypridd U. D. C.* (1903), 68 J. P. 3). On the other hand, where there has been no negligence on the part of the authority but the injury or damage is caused by the malicious act of a third party the authority is not liable (*Simpson* v. *Metropolitan Water Board* (1917), 15 L. G. R. 629; *Ruoff* v. *Long & Co.*, [1916] 1 K. B. 148; 80 J. P. 158).

A vestry acting as a sewer authority laid a new sewer, and their contractor in so doing laid bare a wrought-iron service water-pipe, about two and a half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the trench some clay was put round the pipe, but not in such a quantity or in such a manner as to prevent it from leaking. A few months afterwards the pipe leaked; and the surrounding clay and earth, being moistened, gave way under a van driven by the plaintiff, and the van being overturned the plaintiff was seriously injured. Upon an action to recover damages from the vestry, it was held that they knew or ought to have known the character and condition of the pipe at the time it was laid bare, and consequently were liable for negligence in not having taken special precautions against its leaking in the future (*Cox* v. *Paddington Vestry* (1891), 64 L. T. 566).

Trees surrounded by iron-spiked guards with bent-over tops were planted in a highway. The guards were about five feet three inches high and about three inches out of the perpendicular. The plaintiff sustained injuries by coming into contact with one of the guards whilst crossing the road at night in darkness and whilst the public lighting of the road was restricted under Orders issued under the Defence of the Realm regulations. In an action to recover damages for negligence the jury found that in the darkness the guard was dangerous, and that reasonable measures had not been taken by the defendants to neutralise the danger. It was held that it was the duty of the defendants, notwithstanding the restricted lighting Order to provide reasonable safeguard against the danger to the public (*Morrison* v. *Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277).

The defendants' workmen employed in an unoccupied house in the course of their work left a hole in the floor of a landing on an upper floor into which the plaintiff fell and sustained injuries whilst viewing the house on an order to view from a house agent. The landing was dark at the time and the workmen who were on the lower floor directed the plaintiff upstairs but did not warn her of the danger. It was held that the defendants were liable, as their workmen having created the danger were under a duty to warn the plaintiff of the existence of the hole, that this duty arose independently of occupation or of invitation or licence (*Kimber* v. *Gas Light and Coke Co.*, [1918] 1 K. B. 439; 82 J. P. 125).

By a general system of drainage made by the defendants, various farms were drained by several underground drains, which carried the water through all such farms. The defendants let one of these farms to the plaintiff, with the usual covenant for quiet enjoyment against acts of the lessors or any persons lawfully claiming through or under them. They had previously let another of the farms adjoining, but lying above the plaintiff's farm, to C., with a right to use the drains through the plaintiff's land, so far as they were adequate to carry the water from C.'s farm. C., during the plaintiff's tenancy, by excessive user of the drainage system, which was properly constructed for the purpose of drainage, caused the water passing down the drains in his farm to escape on to the plaintiff's farm and damage his crops. Further, by a proper user by C. of the drains passing through the plaintiff's farm, damage was done to a field in plaintiff's farm by the escape of water; but this arose from one of the drains there having been imperfectly and improperly constructed. It was held that the defendants were liable to the plaintiff for a breach of their covenant for quiet enjoyment in respect of this last damage, as there had been within the meaning of such covenant a substantial interruption by a person who lawfully

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claimed through the defendants, but that they were not liable for the damage done by the excessive user by C. of the drainage system, which was properly constructed, either under their covenant for quiet enjoyment, or under the law of trespass or nuisance (*Sanderson* v. *Mayor, etc. of Berwick* 1884), 13 Q. B. D. 547; 49 J. P. 6).

Liability of local authority for contractor.

It has already been observed that when a contractor is employed by a local authority, this section does not free him from the consequences of *his own negligence*, or that of his servants. Where negligence on the part of such contractor is proved, and the authority have not in any way by interference or the like contributed towards the wrongful act of the contractor or his servants, the authority are not liable. See *Humphreys* v. *Mears* (1827), 1 M. & Ry. 30; 6 L. J. (o.s.) K. B. 89; *Duncan* v. *Findlater* (1839), 6 Cl. & F. 894; *Steel* v. *S. E. Rail. Co.* (1855), 16 C. B. 550; *Butler* v. *Hunter* (1862), 31 L. J. Ex. 214; 7 H. & N. 826; *Bayley* v. *Wolverhampton Waterworks Co.* (1860), 30 L. J. Ex. 57; 6 H. & N. 241; *Foreman* v. *Canterbury* (*Mayor of*), *ante*, p. 255; *Smith* v. *L. & S. W. Rail. Co.* (1870), L. R. 6 C. P. 14; *Hill* v. *New River Co.* (1868), 9 B. & S. 303; 18 L. T. 355; *Daniel* v. *Metropolitan Rail. Co.* (1871), L. R. 5 H. L. 45; 35 J. P. 708; and see *Padbury* v. *Holliday and Greenwood* (1912), 28 T. L. R. 494, as to "collateral" negligence of a contractor's workman. But if the damage arises out of the works themselves, or if the authority are really the party executing the works, they are liable. See *Scott* v. *Manchester* (*Corporation of*) (1856), 1 H. & N. 59; *Hole* v. *Sittingbourne Rail. Co.* (1861), 30 L. J. Ex. 81; 6 H. & N. 488; *Blake* v. *Thirst* (1863), 2 H. & C. 20; *Pitts* v. *Kingsbridge Highway Board* (1871), 25 L. T. 195; 19 W. R. 884. Where a duty is imposed upon a public body they are not excused from omitting to perform it, or from the imperfect or improper performance of it, by reason of their having engaged a contractor to do it. See *Pickard* v. *Smith* (1861), 10 C. B. (N.S.) 470; 4 L. T. 470; *Gray* v. *Pullen* (1864), 29 J. P. 69; 5 B. & S. 970; *Hardaker* v. *Idle U. D. C.*, [1896] 1 Q. B. 335; 60 J. P. 196; *Penny* v. *Wimbledon U. D. C.*, [1899] 2 Q. B. 72; 63 J. P. 406; *Hill* v. *Tottenham U. D. C.* (1898), 79 L. T. 495; *The Snark*, [1900] P. 105; *Maxwell* v. *British Thomson-Houston Co.* (1902), 18 T. L. R. 278; *Clements* v. *Tyrone C. C.*, [1905] 2 I. R. 542; *Jacob* v. *Mayor, etc. of Southend-on-Sea* (1902), Times, December 16th, (1903), May 21st; *Sanders* v. *Reid and London C. C.* (1904), 68 J. P. N. 557; *Mileham* v. *Marylebone Borough Council and Latter*, *post*, p. 588; *Hurlstone* v. *London Electric Rail. Co.* (1913), 30 T. L. R. 398; *Pinn* v. *Rew* (1916), 32 T. L. R. 451. Where work is ordered to be done which is lawful in itself, but from which in the natural course of things injurious consequences are likely to arise, the employer must see that means are adopted to prevent such consequences. He cannot relieve himself of his liability by employing someone else to do what is necessary to prevent the act which he orders to be done from becoming wrongful (*Bower* v. *Peate* (1876), 1 Q. B. D. 321; 40 J. P. 789; *Dalton* v. *Angus* (1881), 6 App. Cas. 740; 46 J. P. 132; *Hughes* v. *Percival* (1883), 8 App. Cas. 443; 47 J. P. 772; *Black* v. *Christchurch Finance Co.*, [1894] A. C. 48; 58 J. P. 332; *Holliday* v. *National Telephone Co.*, [1899] 2 Q. B. 392; *Hewinson* v. *Cheltenham R. D. C.* (1903), Times, July 8th; *Stephen* v. *Thurso Commissioners* (1876), 3 R. 535). *Cf. Wilson* v. *Hodgson's Kingston Brewery Co.* (1917), 80 J. P. 39; 32 T. L. R. 60, where it was held that the dangerous act done by the contractor was not one which was contemplated on his employment.

A council acting under s. 42, *ante*, p. 107, undertook the duty of cleansing the cesspools of their district. For this purpose they contracted for the removal of the sewage from the cesspools, the contractor using their sewage cart and depositing the filth upon the lands of neighbouring farmers by arrangement which he made with them. The council did not instruct him where to deposit the sewage. The contractor, without the permission of the plaintiffs, deposited sewage removed from the cesspools upon the plaintiffs' land. It was held that the council were responsible; on the terms of the contract they had not contracted for the disposal (as distinct from the removal) of the filth; but *per* BUCKLEY, L.J., even if they had done so, they would have been responsible for the contractor's failure to dispose of it (*Robinson* v. *Beaconsfield R. D. C.*, [1911] 2 Ch. 188; 75 J. P. 353). When persons are incorporated by statute for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such

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inconvenience and injury (*Geddis* v. *Bann Reservoir* (*Proprietors of*) (1878), 3 App. Cas. 430; *Bligh* v. *Rathangan River Drainage District Board*, [1898] 2 I. R. 205).

An agreement by a contractor to indemnify his principal against claims arising out of his negligence in carrying out works is not void as against public policy, although the principal may in law be a joint tortfeasor in respect of such negligence (*Newcombe* v. *Yewen and Croydon R. D. C.* (1913), 29 T. L. R. 299).

Non-liability for negligence outside employment.

A public board is not of course answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions (see *Holden* v. *Liverpool New Gas Co.* (1846), 3 C. B. 1; 15 L. J. C. P. 301); nor for the act of their officer or agent done without their knowledge and beyond the scope of his employment (*Bolingbroke* v. *Swindon L. B.* (1874), L. R. 9 C. P. 575). In that case a local board, being in occupation of a sewage farm, gave to B. plenary powers for the management thereof in the most beneficial manner. A ditch ran between the farm and the land of the plaintiff. With a view to rendering such ditch more capable of carrying off the drainage from the farm B. wrongfully went upon the plaintiff's land, pared away his side of the ditch, and cut down so much of the brushwood and underwood as impeded the flow of the ditch:—*Held*, that B.'s acts were not within the scope of his employment, and consequently that the local board were not liable for them, there being no implied authority from the board to do them. And see *Charleston* v. *London Tramways Co.* (1888), 36 W. R. 367. Whether or no an officer is acting within the scope of his authority is a question of fact which should be decided by the jury: see *Hutchins* v. *L. C. C.* (1916), 80 J. P. 193; 14 L. G. R. 313; *Recketts* v. *Tilling*, [1915] 1 K. B. 644.

Negligence of driver supplied by contractor.

D. contracted with the defendants, an urban authority, to supply by the day a driver and horse to drive and draw their watering cart. The driver was employed and paid by D., and was not under the defendant's direction and control except that their inspector directed him what streets to water. In an action for damages for injuries caused by the negligent conduct of the driver whilst in charge of his cart, it was held (following *Quarman* v. *Burnett* (1840), 6 M. & W. 499, and distinguishing *Rourke* v. *White Moss Colliery Co.* (1877), 2 C. P. D. 205) that the defendants were not liable (*Jones* v. *Liverpool Corporation* (1885), 14 Q. B. D. 890; 49 J. P. 311).

A plaintiff sustained injury to his person and cab by reason of the vehicle colliding with an upright key left standing in a watercock on the roadway by a driver of one of the watercarts of the defendant council. The defendant L. was under agreement to supply the council for a period of three years with horses, harness and drivers on certain terms and conditions, amongst which was one placing the drivers under the orders of the council's surveyor in respect of the particular work to be done on each day. The driver referred to was supplied under the agreement. In an action against both defendants the jury found that the driver was negligent, that he was the servant of L., but that at the time of the accident he was acting under the control of the defendant council in the act of filling his cart. It was held, following *Penny* v. *Wimbledon U. D. C.*, *ante*, p. 587, that judgment should be entered against the council, and that on the construction of the agreement, and on the authority of *Jones* v. *Liverpool Corporation*, *supra*, judgment should also be entered against the defendant L. (*Mileham* v. *Marylebone Borough Council and Latter* (1903), 67 J. P. 110; 1 L. G. R. 412).

See a county court case in 127 L. T. Jo. 38, on the subject of an authority's liability for a nuisance arising out of the use of a steam roller let out by them to a third party.

Non-liability for accidents arising out of extraordinary causes.

Neither are a local authority responsible for accidents arising out of extraordinary causes, where all reasonable care has been taken to prevent such as would arise from ordinary causes. See *Blyth* v. *Birmingham Waterworks Co.* and the other cases cited in the notes to s. 66, *ante*, p. 144; and see *Ridley, Whitley & Co., Limited* v. *Metropolitan Water Board* (1905), Times, June 7th; *East Ham Corporation* v. *Ilford Gas Co.* (1905), Times, July 13th; *Ocean Accident and Guarantee Corporation* v. *Ilford Gas Co.* (1905), Times, July 29th. As to the precautions which public bodies are required by law to take to prevent injury from the exercise of their powers, reference may be made to *Great Western Railway of Canada* v. *Braid* (1863), 1 Moo. P. C. C. (N.S.) 101; *Biscoe* v. *G. E. Rail. Co.* (1873), L. R. 16 Eq. 636; *Liebig's Extract of Meat Co.* v. *Mersey Docks and Harbour Board and Nelson*, [1918] 2 K. B. 381; 87 L. J. K. B. 1133; *Baldwin* v. *Halifax Corporation*, *ante*, p. 257.

Performance of act with

The police authority of a town in Scotland, having opened a manhole in the middle

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of a thoroughfare to clean the sewer, set up a winch over the hole, and protected three sides of it. Two men were at work. A boy of nine years running along the street, and looking over his shoulder, fell into the hole. It was held that the authority were not liable, as they were doing an ordinary act in a proper way with sufficient precautions (*Adams* v. *Aberdeen Magistrates* (1884), 11 Ct. of Sess. Cas. (4th ser). 852; and see *McClelland* v. *Johnstone* (1902), 4 F. 459; *Plantza* v. *Glasgow Corporation*, [1910] S. C. 786). *Cf. Crane* v. *South Suburban Gas. Co.*, [1916] 1 K. B. 33; 80 J. P. 51. In that case workmen placed a firepail in which was a ladle containing molten lead, on vacant land near a highway. The fire was left unattended and unguarded. A passer-by accidentally knocked over the firepail and the molten metal was spilled on the plaintiff—a young child who was playing near with other children. It was held that the defendants were liable as what they were doing was a danger unless precautions were taken to guard the public using the highway.

See *Stanbury* v. *Exeter Corporation* and cases cited therewith on p. 220, *ante*, as to when an officer appointed by an authority is *their* officer so as to render them liable for his acts.

Liabilities in respect of injuries to servants.

As to the liability of a local authority for the death of a man in their employ from suffocation by sewer gas whilst cleansing a sewer belonging to them, see *Digby* v. *East Ham U. D. C.* (1896), 13 T. L. R. 11; and see the Times, May 25th, 1897. See also as to the duty of an authority to see that a contractor or person employed by him has a safe article to work upon, *Giles* v. *Aldershot U. D. C.* (1902), 66 J. P. 441; *Elliott* v. *Roberts & Co.*, [1916] 2 K. B. 518; 81 J. P. 20; and see now as to the wide liability of a local authority to compensate their workmen and the workmen of contractors employed by them for injuries sustained in the course of their employment, the Workmen's Compensation Act, 1906. The following decisions under that Act may be referred to: *Mulrooney* v. *Todd*, [1909] 1 K. B. 165; 73 J. P. 73; *Ince* v. *Reigate Education Committee*, [1916] 2 K. B. 671; 32 T. L. R. 721.

The liabilities of local authorities as surveyors of highways, and in respect of accidents on highways caused by their negligence, have already been considered. See s. 144, *ante*, p. 253. See *McLoughlin* v. *Warrington Corporation* (1911), 75 J. P. 57, as to an accident caused by the defective condition of a drinking fountain in the highway. As to negligent driving of a fire engine, see *Scudder* v. *London C. C.* (1909), Times, July 15th. See also what is said as to the liability of local authorities for the acts of their servants in the notes to s. 116, at p. 220, *ante*.

As to the liability of an authority for negligence in the management of a hospital, see *Hillyer* v. *London Corporation*, [1909] 2 K. B. 820; 73 J. P. 501; *Sherwell* v. *Alton U. D. C.* (1909), 25 T. L. R. 417, and other cases in notes to s. 131, *ante*, p. 239.

As to a claim in respect of a child injured whilst playing with an officer's tools, see *Forsyth* v. *Manchester Corporation* (1912), 76 J. P. 465.

As to their liability *quâ* education authority to children under their charge, see *Shrimpton* v. *Herts C. C.* (1911), 75 J. P. 201; 104 L. T. 145; *Smith* v. *Martin and Kingston-upon-Hull Corporation*, [1911] 2 K. B. 775; 75 J. P. 433; *Morris* v. *Carnarvon C. C.*, [1910] 1 K. B. 840; 74 J. P. 201; *Ching* v. *Surrey C. C.*, [1910] 1 K. B. 736; 74 J. P. 187; *Jackson* v. *London C. C.* (1911), 76 J. P. 37; 28 T. L. R. 66; *Shepperd* v. *Essex C. C.* (1913), 29 T. L. R. 303; *Chilvers* v. *L. C. C.* (1916), 80 J. P. 246; 32 T. L. R. 363; and as to their liability *quâ* owners of land to children playing, or wandering, thereon, see *Schofield* v. *Bolton Corporation* (1910), 26 T. L. R. 230; 54 Sol. J. 213; *Barker* v. *Herbert*, [1911] 2 K. B. 633; 75 J. P. 481; *Latham* v. *Johnsons, Ltd.*, [1913] 1 K. B. 398; 77 J. P. 137; *Reilly* v. *Greenfield Coal and Brick Co., Ltd.*, [1909] S. C. 1328; *Holland* v. *Lanarkshire District Committee*, [1909] S. C. 1142; *Mackenzie* v. *Fairfield, etc. Co., Ltd.*, [1913] S. C. 213; *Johnstone* v. *Lochgelly Magistrates*. [1913] S. C. 1078; *Grant* v. *Fleming*, [1914] S. C. 228; *Norman* v. *G. Western Rail. Co.*, [1915] 1 K. B. 584; *Wilson* v. *G. & S. W. Rail.*, [1915] S. C. 215; *McMurray* v. *Glasgow School Board*, [1916] S. C. 9; 53 Sc. L. R. 66, and cases cited in notes to s. 164, *ante*, p. 373, as to accidents in public parks, etc., and to s. 91 on p. 166, *ante*.

Liability of local authority charging tolls.

Where a public board let the navigation of a river and omitted to give notice to the lessee to repair a lock, and in consequence of such want of repair a barge owner sustained loss, the board were held not to be liable, as the loss did not necessarily result from the omission (*Walker* v. *Goe* (1859), 4 H. & N. 350). Where a corporation were empowered to improve the navigation of a river, and for that purpose erected staunches, the effect of which, combined with the accumulation of filth and the growth

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of weeds, was that the river overflowed and damaged the lands adjoining, it was held that the riparian owner had no ground of action against the corporation, though he might have a remedy by applying for compensation under a section corresponding to s. 308, *post*, p 642 (*Cracknell* v. *Thetford* (*Mayor of*) (1869), L. R. 4 C. P. 629).

The principle on which a private person or company is liable for damages occasioned by the neglect of servants applies to a corporation which has been entrusted by statute to perform certain works and to receive tolls for the use of those works, although the tolls, unlike the tolls received by the private person or company, are not applicable to the use of the individual corporators or to that of the corporation, but are devoted to the maintenance of the works (*Mersey Docks and Harbour Trustees* v. *Gibbs* (1866), L. R. 1 H. L. 93; 30 J. P. 467). Therefore, conservators of a river having in part constructed and in part acquired a towing path, and having taken tolls for the use of it, were held liable for damages caused by its defective condition (*Winch* v. *Thames* (*Conservators of*) (1874), L. R. 9 C. P. 378; 36 J. P. 646).

When public commissioners are guilty of negligence in the management of their works, and persons, to avert or remove damage which would result from such negligence to themselves, do an act which damages a third person, he has a right of action against the commissioners whose negligence was the primary cause of the damage (*Collins* v. *Middle Level Commissioners* (1869), L. R. 4 C. P. 279). See also *Harrison* v. *G. N. Rail. Co.* (1864), 33 L. J. Ex. 266; 3 H. & C. 231; *Burrows* v. *March Gas Co.* (1872), L. R. 7 Ex. 96; 36 J. P. 517.

General liability for civil injuries.

A local authority will be liable for breaches of contract and for civil injuries to the same extent as any other corporate body. Hence in *Higgs* v. *Godwin* (1858), 27 L. J. Q. B. 421; 31 L. T. (o.s.) 196, an action was brought against a local board for infringing a patent.

In order to maintain an action against a local authority for payment of claims upon them payable out of particular funds, it must be shown that they are in possession of those funds, and that they are available for payment of the claims. See *Pardoe* v. *Price* (1847), 16 L. J. Ex. 192; 16 M. & W. 451; *Lloyd* v. *Burrup* (1868), L. R. 4 Ex. 63. But in a case where a local board, in default of owners executing works, contracted with a third person to execute them, and the contract contained a provision to pay him when the money was collected from the owners, it was held that he was entitled to recover for the work done by him, though the money could not be recovered from the owners by reason of a defect in the notices (*Worthington* v. *Sudlow*, *ante*, p. 304).

Where a vestry took possession of highways in respect of which a rent was payable to the representative of a former owner of the land, they were held liable to an action for non-payment of the rent (*Sansom* v. *Shoreditch* (*Vestry of*) (1869), L. R. 4 C. P. 654; *cf. Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317; 74 J. P. 41).

As to the liability of a local authority to be sued for salaries due to officers, see the notes to s. 189, *ante*, at p. 450.

Where a municipal corporation was sued for a debt owing by them in that character, it was held that they could set off a debt due to them as a local board (*Pedder* v. *Preston* (*Corporation of*) (1862), 12 C. B. (N.S.) 535; 6 L. T. 540).

An action for malicious prosecution will lie against a corporation (*Cornford* v. *Carlton Bank*, [1899] 1 Q. B. 392; affirmed on other grounds, [1900] 1 Q. B. 22; and see *Citizens' Life Assurance Co.* v. *Brown*, [1904] A. C. 423). See also *Wiffen* v. *Bailey and Romford U. D. C.*, [1915] 1 K. B. 600; 79 J. P. 145.

As to the liability of a corporate body in respect of a libel or slander published by one of its servants acting within the scope of his employment, see *Beaton* v. *Glasgow Corporation*, [1908] S. C. 1010; *Glasgow Corporation* v. *Lorimer*, [1911] A. C. 209.

As to "punitive" damages in an action against a local authority for trespass, see *Davis* v. *Bromley U. D. C.* (1903), 67 J. P. 275; 1 L. G. R. 668; and as to such damages where the defendant is not the actual wrongdoer but is responsible only as his principal, see *Black* v. *N. B. Rail. Co.*, [1908] S. C. 444, *per* the LORD PRESIDENT.

An action for damages will not lie against an authority for maliciously disapproving building plans (*Davis* v. *Bromley Borough Council*, [1908] 1 K. B. 170; 71 J. P. 513).

Enforcing judgment against local authority.

It becomes necessary to consider how a judgment recovered against a local authority can be enforced. Where a judgment was recovered against the clerk of commissioners under an Improvement Act, and the sheriff had on a *fi. fa.* seized certain goods of

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the commissioners vested in them for public purposes, the Court of Exchequer refused to set aside the writ of *fi. fa.* and subsequent proceedings, but left the parties to bring an action of trespass, or to take such other step as they might think proper (*Saunders* v. *Slack* (1864), 11 L. T. 484). This case was approved in *Worral Waterworks Co.* v. *Lloyd* (1866), L. R. 1 C. P. 719. There land, which had been conveyed to a local board for the purposes of the Public Health Acts, was used as a reservoir for the supply of water to the district. A judgment having been obtained against the board in the name of their clerk, it was held that the land was liable to be taken under a writ of *elegit*. WILLES, J., said: "We have been anticipated by the Exchequer in *Saunders* v. *Slack*, and by the decision of the House of Lords in the case of *Mersey Docks Trustees* v. *Gibbs*, *ante*, p. 590. It has been said that the House of Lords only referred to the right of the plaintiff to judgment, and not to the execution; but the principle upon which their decision rests is equally applicable to the right to execution as to judgment, and it was so understood in *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711." If there be no property of the authority available to satisfy the debt, the proper remedy is by *mandamus* to the authority to pay or satisfy the judgment out of moneys in their hands or rates which they can make. A local authority has implied power to make a rate to pay damages for injuries caused by the negligence of their servants in the exercise of their statutory powers (*R.* v. *Selby Dam Drainage Commissioners*, [1892] 1 Q. B. 348; 56 J. P. 356; *Parker* v. *Carrigrohane Drainage Board*, [1902] 2 I. R. 138). The decisions on *mandamus* in such cases have already been noticed. See the notes to s. 210, *ante*, at pp. 474 *et seq.* That section, however, affords no defence to an action to recover a debt more than six months old, for judgment may be enforced by the ordinary process of execution without recourse to a *mandamus* (*South Metropolitan Gas Co.* v. *Bermondsey Borough Council* (1901), Times, May 18th). See also *Webb* v. *Herne Bay Commissioners*, *ante*, p. 476, where it was held that an action for a *mandamus* might be maintained to compel the board to pay the amount due out of moneys in their hands without making a rate for the purpose; and *Bush* v. *Beavan*, *ante*, p. 451, where a *mandamus* was refused to enforce payment of a debt against commissioners, the debt not being a charge on the local rate, but due from the commissioners personally. The *mandamus* may be claimed in the same action as that to establish the debt (*Ward* v. *Lowndes* (1859), 1 El. & El. 940; 29 L. J. Q. B. 40).

In 1885 the plaintiff obtained judgment with costs against the defendants in an action to restrain them from discharging sewage into a watercourse on his property. In 1890 the costs were taxed and the plaintiff obtained a garnishee order *nisi* attaching all money belonging to the defendants in the hands of their treasurer. This order was discharged on the ground (following *Waddington* v. *City of London Union* (1858), El. B. & E. 370) that the funds attached were raised by rates to meet expenses of the current year and not past liabilities. The plaintiff then issued a writ of *elegit* against the lands of the defendants, and the defendants moved to discharge it on the ground that execution ought not to issue against their lands to satisfy a debt which they could not legally pay. The sheriff had not made his return to the writ, and there was no evidence to show whether the defendants had any lands which could be lawfully applied in payment of the debt. It was held that the motion was premature and must be dismissed (*Jersey* (*Lord*) v. *Uxbridge R. S. A.* (No. 1), (1891), 55 J. P. 165; 7 T. L. R. 294). Afterwards the sheriff delivered under the writ land acquired for a sewage farm on behalf of a contributory place. It was held that such land could not be taken in execution to satisfy a debt payable out of general expenses, having been purchased out of a loan borrowed on the credit of the separate rates on the contributory place, and all proceedings under the writ and inquisition were stayed (*Jersey* (*Lord*) v. *Uxbridge R. S. A.* (No. 2), [1891] 3 Ch. 183).

When a local authority enter into any contract, they will be liable to the contractor in an action on the contract if it is broken by them, and he will not be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action on the case for not paying money which the defendants may have in their hands (*Nowell* v. *Worcester* (*Mayor of*) (1854), 9 Ex. 457; 23 L. J. Ex. 139; *Payne* v. *Brecon* (*Mayor of*) (1858), 22 J. P. 690; 3 H. & N. 572). A judgment against a municipal corporation will not, however, operate as a charge upon the real estate belonging to it, unless the Local Government Board (51 & 52 Vict. c. 41, s. 72) so order (*Arnold* v. *Gravesend* (*Mayor of*) (1856), 25 L. J. Ch. 777); nor, as it seems, upon other property of the

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corporation, according to *Pallister* v. *Gravesend* (*Mayor of*) (1850), 9 C. B. 774; *Arnold* v. *Ridge* (1853), 13 C. B. 745; 22 L. J. C. P. 235; but see *Worral Waterworks Co.* v. *Lloyd*, *ante*, p. 591.

See s. 249, *ante*, p. 549, with reference to the taxation of the bill of a solicitor employed by a local authority.

Where a local authority enter into a contract *ultra vires*, and cannot pay the contractor out of their funds, the individual members of the board are not personally liable on that contract (*Bailey* v. *Cuckson* (1858), 32 L. T. (o.s.) 124; 7 W. R. 16). Whether they can be made liable as on a personal guarantee may be a question; but according to *Mountstephen* v. *Lakeman* (1870), L. R. 5 Q. B. 613, no action would be maintainable unless there was a written document in conformity with the Statute of Frauds. This decision was reversed in error upon a different view of the facts ((1871), L. R. 7 Q. B. 196), and the House of Lords confirmed the judgment of the Court of Error, holding that there was a personal pledge of credit ((1874), L. R. 7 H. L. 17). As to the liability of individual members of a board for an illegal act committed by their officer, but by their direction, see *Mill* v. *Hawker*, *ante*, p. 585. In a more recent case a metropolitan vestry passed resolutions authorising certain illegal expenditure out of the rates. An action was brought by the Attorney-General at the relation of a ratepayer, and by the ratepayer as plaintiff against the vestry and six of the vestrymen who had voted for the resolution, to restrain the proposed application of the rates. It was not alleged that any of the rates had been applied as proposed, but merely that the vestry intended to so apply them. It was held that the individual defendants were not properly made parties for the purpose of obtaining costs from them, and that the action must be dismissed as against them (*Att.-Gen.* v. *Bermondsey* (*Vestry of*) (1883), 23 Ch. D. 60; 47 J. P. 453). It would seem from this case that if the money had in fact been paid for the illegal purpose, the individual members might have been compelled to recoup the money and pay the costs, according to *Att.-Gen.* v. *Compton* (1842), 1 Y. & C. C. C. 417. See also *O'Shea* v. *Cork R. D. C.*, on p. 500, *ante*.

It will be remembered that under 29 & 30 Vict. c. 90, s. 46, re-enacted in s. 7, *ante*, p. 39, every local board was incorporated and rendered competent to sue and be sued in the corporate name. But under 11 & 12 Vict. c. 63, s. 138, local boards in non-corporate districts were to sue and be sued in the name of their clerk. Where proceedings were taken in the name of the clerk after the passing of the Act which incorporated the board, the court allowed them to be amended by substituting the local board for the clerk. See *Deeks* v. *Bailey* (1869), 21 L. T. 581; *Bolingbroke* (*Lord*) v. *Townsend* (1873), L. R. 8 C. P. 645; 37 J. P. 7; *Mills* v *Scott* (1873), L. R. 8 Q B. 496; 37 J. P. 807; *Prior* v. *West Ham L. B.* (1866), 15 L. T. 250.

Where a local board were defendants in a Chancery suit, and no answer was put in to the bill, all the members of the board having resigned, the Vice-Chancellor allowed the plaintiff to take a decree in the terms of the petition (*Hardinge* v. *Southborough L. B.* (1875), 32 L. T. 250).

If a local authority and their contractor are sued on a joint tort and the contractor pays into court with a denial of liability a sum sufficient to satisfy the plaintiff's claim, such payment does not disentitle the plaintiff to judgment for costs against the authority (*Penny* v. *Wimbledon U. D. C.*, *ante*, p. 260).

Separate and distinct causes of action cannot be joined in one action against a local authority and another tort feasor, though both torts result in but one injury (*Thompson* v. *London C. C.*, [1899] 1 Q. B. 840).

Remedies of local authority.

As the local authority are liable to proceedings in the courts of law, so they are entitled to the remedies of other suitors. Thus, where a local board had contracted with a sewage company for the latter to execute works for the removal of sewage, and the company so improperly carried on the works that they drove back large quantities of the sewage into the district, it was held that the board might maintain a bill for an injunction, and that it was not required that the Attorney-General should file an information (*Nuneaton L. B.* v. *General Sewage Co.* (1875), L. R. 20 Eq. 127). The intervention of the Attorney-General was held not to be necessary because the action was based on contract and there was an interference with property of the plaintiffs (see *Wallasey L. B.* v *Gracey*, *ante*, p. 207, *per* STIRLING, J.).

See the R. S. C. Order XXXI., r. 5, as to interrogatories in actions by or against local authorities See also as to discovery of documents, *Finlay* v. *Glasgow Corporation*, [1915] S C. 615.

See *Munday* v. *London C. C.*, [1916] 2 K. B. 331, as to the right of a defendant to pay into court with a notice admitting negligence but denying damage and in this manner denying liability. **Note to Section 265.**

(*b*) See s. 247 (7), *ante*, p. 543.

Notices.

266. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication. Notices, etc. may be printed or written.

It is presumed that this should be read *reddendo singula singulis*, so that the notices referred to must be such as each officer by virtue of his office can properly sign.

37 & 38 Vict. c. 89, s. 40, rendered the notice sufficient if it purported to be signed by the officer; but as these words are omitted, the signature must be proved in any proceedings where the notice is of importance, unless it be admitted by the opposite party.

The provision in the text was of importance under the P. H. A., 1848, in respect of non-corporate districts, where a certain number of members were required to sign special documents. But as there are now no such districts, all being incorporated, and there is no requisition as to signature by members, the section seems to be one of extreme caution.

This section does not make it necessary for the clerk to sign a demand for expenses incurred under s. 36, *ante*, p. 96, where such demand is issued and signed by the council's rating surveyor and collector in the course of his ordinary work (*Willis* v. *Rotherham Corporation* (1911), 75 J. P. 421; 105 L. T. 436).

With regard to the use of block signatures, see *Osgood* v. *Nelson* (1872), L. R. 5 H. L. 636; 41 L. J. Q. B. 329; *Blades* v. *Lawrence* (1874), L. R. 9 Q. B. 374; 33 J. P. 261; *Bennett* v. *Brumfitt* (1867), L. R. 3 C. P. 28.

A notice under s. 150 on a printed form filled up with the name of the clerk in print at the foot was held a sufficient signature in *Brydges* v. *Dix* (1891), 7 T. L. R. 215. The court distinguished *R.* v. *Cowper* (1890), 24 Q. B. D. 60, 553. It is doubtful whether signature by a clerk in the name of the clerk to the authority would be sufficient: See *France* v. *Dutton*, [1891] 2 Q. B. 208.

267. Notices orders and any other documents (*a*) required or authorised to be served under this Act may be served by delivering the same to or at the residence (*b*) of the person to whom they are respectively addressed, or where addressed to the owner (*c*) or occupier of premises (*c*) by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises (*d*); they may also be served by post (*e*) by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post. Service of notices.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description (*f*).

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(*a*) It seems that these words include a summons, which may therefore be served as provided by this section (*R.* v. *Mead*, [1894] 2 Q. B. 124; 58 J. P. 448; *R.* v. *Braithwaite*, [1918] 2 K. B. 319; 82 J. P. 242).

Summons included.

(*b*) It was held in *R.* v. *Braithwaite*, *supra*, that for the purposes of a summons (being a document within the meaning of the above section) the ratepayer's place of business is to be treated as his "residence." In *Blackwell* v. *England* (1858), 27 L. J. Q. B. 124, the court said that meaning of the word "residence" must be determined with reference to the purpose of the statute in which it was used: Therefore, although for the purposes of the Poor Law Acts it meant the place where a person lived with his family, yet for the purpose of a Bill of Sale Act, which required the residence of an attesting witness to be stated, a business address was sufficient. See also *W. R. Yorkshire C. C.* v. *Colne Corporation* (1918), 82 J. P. 14, and *Berks C. C.* v. *Reading Corporation*, [1921] 2 K. B. 787; 85 J. P. 173. And see *Mason* v. *Bibby*, and other cases in note (*d*), *infra*. A person may have more than one residence, for he may have houses in different places, each of which may be called his residence (*Walcot* v. *Boyfield* (1854), 1 Kay, 534; 18 Jur. 570). Except when a notice is addressed to the owner or occupier of premises and is served on someone on, or is affixed to, the premises to which it relates, such notice must, in the case of a limited company, apparently be left at or posted to the registered office of the company: see the Companies (Consolidation) Act, 1908, ss. 116, 285, and *Pearks, Gunston and Tee, Ltd.* v. *Richardson*, [1902] 1 K. B. 91; 66 J. P. 119.

"Residence."

Mode of service.

(*c*) See the definitions of *owner* and *premises* in s. 4, *ante*, pp. 7, 8.

(*d*) What is a "conspicuous" part of the premises is a question of fact (*West Ham Corporation* v. *Thomas* (1908), 73 J. P. 65; 6 L. G. R. 1043).

The P. H. A., 1848, s. 150, provided that in all cases in which any notice was required to be given to the owner or occupier of any premises, it should be sufficient to address the notice to them by the description of the "owner" or "occupier" of the premises, and that the notice should be served either personally or by delivering to same to some inmate of the owner's or occupier's place of abode:—*Held*, that service of a notice properly addressed to an owner by name by delivering it to his clerk at his place of business was sufficient, s. 150 being merely in aid of service of notices; *per* MARTIN, B., the service was good under s. 150, a place of business being a place of abode, and a clerk an inmate for the purposes of that section (*Mason* v. *Bibby* (1864), 33 L. J. M. C. 105; 28 J. P. 121). A similar service was held sufficient under the present section in *Newport* (*Mayor, etc. of*) v. *Lang* (1892), 57 J. P. 199, and, as stated above, in *R.* v. *Braithwaite*, [1918] 2 K. B. 319; 82 J. P. 242. See, however, *R.* v. *Lilley* (1911), 75 J. P. 95; 104 L. T. 77, as to the meaning of "place of abode" in the S. J. A., 1848, s. 1; followed in *R.* v. *Rhodes* (*ex parte McVittie*) (1915), 79 J. P. 527; 85 L. J. K. B. 830; and see *McVittie* v. *Marsden*, [1917] 2 K. B. 878; 81 J. P. 109. For a case under a local Act as to the service of a notice on the parent of a verminous child, see *Hope* v. *Devaney* (1914), 78 J. P. 343; 12 L. G. R. 1286.

In a case decided under the Valuation (Metropolis) Act, 1869, it was held that it was not sufficient to serve a notice that an Order under that Act had been made, there should be service of the Order or a copy thereof; see *Curtis* v. *Crow* (1916), 80 J. P. 175; 14 L. G. R. 395.

In *Woodford U. D. C.* v. *Henwood* (1899), 64 J. P. 148, service by affixing a notice on the premises was held good, although the residence of the owner was well known to the council. See also to the same effect, *Sharpley* v. *Bear* (1903), 67 J. P. 442, where the name and residence of the owner were known to certain of the council's officials but not to the clerk who addressed the notice to "the owner" and fixed it on the premises.

The London Building Act, 1894, s. 188, provides that "any notice, order or other document required or authorised to be served under this Act the service of which is not provided for by the Summary Jurisdiction Acts . . . may be served by delivering a copy thereof at or by sending a copy thereof by post in a registered letter to the usual or last known residence in the United Kingdom of the person to whom it is addressed, or by delivering the same to some person on the premises to which it relates, or if no person be found on the premises, then by fixing a copy thereof on some conspicuous part of the building to which it relates. . . ." It was held that in the absence of evidence that reasonable inquiry had been made to find out who

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was the owner so that he could be served under the S. J. A., 1848, s. 1, the provisions of s. 188 were not applicable (*R.* v. *Mead*, [1898] 1 Q. B. 110; 61 J. P. 759).

As to the meaning of the words "last known address" in the Bankruptcy Act, 1883, s. 142 (now s. 146 of the Bankruptcy Act, 1914), see *Re Follick* (1908), 97 L. T. 645.

As to the necessity or non-necessity for a notice to produce in order that secondary evidence may be given of a notice, see *Doe d. Fleming* v. *Somerton* (1845), 7 Q. B. 58; *Andrews* v. *Wirral R. D. C.* (1916), 80 J. P. 29.

As to service of proceedings to enforce a charge, where the owner of the property is not known, see *Wealdstone U. D. C.* v. *Evershed*, *ante*, p. 572.

A person might in certain circumstances be estopped from setting up "no notice." See *Pierson* v. *Altrincham U. D. C.* (1917), 81 J. P. 149; 15 L. G. R. 228.

(*e*) The P. H. A., 1848, s. 150, allowed service by post only when the owner's place of abode was not within the district: there is no such distinction in the text. Prepayment of the letter must be proved in order to prove service (*Walthamstow U. D. C.* v. *Henwood*, [1897] 1 Ch. 41; 61 J. P. 23). In a case decided under the Valuation (Metropolis) Act, 1869, where the wording of s. 65 is very similar to this section, it was held that the presumption that a notice had been received when properly addressed, prepaid and delivered to the post office is not merely a presumption of fact unless the contrary be shown, but is a presumption of law whether in fact the notice was received by the addressee or not (*R.* v. *Westminster Union* (*ex parte Woodward*), [1917] 1 K. B. 832; 81 J. P. 93). See also *Watts* v. *Vickers, Ltd.* (1917), 86 L. J. K. B. 177; 33 T. L. R. 137.

(*f*) Notwithstanding this permission, it will be found in general expedient to ascertain, if possible, the names of the owners and occupiers: embarrassment often arises in dealing with unknown persons. In case of doubt a notice may be addressed to "Mr. A. B. or other the owner of" the premises, etc. *Cf. Woodford U. D. C.* v. *Henwood*, *ante*, p. 594; *Butler* v. *Gravesend Urban Sanitary Authority* (1894), 58 J. P. 446.

If the address is on the outside it may be that the omission to repeat it in the body of the notice would be regarded as immaterial (*Linforth* v. *Butler*, [1899] 1 Q. B. 116).

Appeal.

Appeal in certain cases to Local Government Board.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days (*a*) after notice of such decision (*b*), address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority (*c*); the Local Government Board may make such Order in the matter as to the said Board may seem equitable, and the Order so made shall be binding and conclusive on all parties (*d*).

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its Order (*e*), direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

(*a*) The Appeal is now to the Ministry of Health and the memorial of appeal must be received by them on or before the twenty-first day after the receipt of the notice of decision (*i.e.*, the demand for payment—see following note). See also note (*c*).

Appeals can be made against "decisions" of local authorities in proceedings under ss. 23, 36, 41, 46, 47, 62, 70, 98, 120, and 150 of the Act. Appeals against rates (even water rates) cannot be made under this section.

(*b*) Notice of apportionment of expenses under s. 150 having been served upon

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What is a "decision."

an owner, and demand of payment having been made after three months had expired (see s. 257), the owner deeming himself aggrieved by the *decision* of the authority, addressed a memorial, by way of appeal, to the L. G. B., stating the grounds of his complaint. On a rule for prohibition to the Board, the Court of Appeal held that an appeal lay to the Board, and that no prohibition ought to be granted. The court held that the demand of payment was the first decision from which an appeal would lie under the section. With regard to the power of the Board on such appeal, BAGGALLAY, L.J., said: "That while they might properly refuse to travel beyond the grounds of complaint alleged in the memorial, yet that they had jurisdiction to inquire into the whole matter, and to inquire whether the aggregate amount of the expenses was unreasonable or unnecessary, as well as whether the proportion assessed upon the appellant was right." And BRETT, L.J., said: "It seems to me obvious from the construction of the Act, that the Board have power to inquire into every circumstance, however remote, which could reasonably determine the question whether it was equitable or not that a particular sum should be paid" (*R.* (or *Penarth*) v. *Local Government Board* (1882), 10 Q. B. D. 309; 47 J. P. 228). In the same case BRETT, L.J., also expressed an opinion that the decision of the Board was judicial, and that it was their duty to hear the parties presenting the memorial, though not necessarily by hearing oral evidence. It was their duty, however, to allow the appellant to know the answer of the authority to his memorial, so as to let him reply to it. The decision in the *Penarth Case* was applied by the Divisional Court in *R.* v. *L. G. B.* (*Ex parte Thorp*) (1915), 79 J. P. 248; 13 L. G. R. 402, to a decision of a local authority to substitute water-closets in lieu of privies under s. 36, *ante*. It was held that the decision referred to in s. 268 is a decision of the local authority that the expenses incurred by them should be recovered in a summary manner or that they shall be declared to be private improvement expenses, and is not any decision of the local authority in a case in which the expenses may ultimately be recovered summarily or be declared to be private improvement expenses. As to this see further notes (*c*), (*d*), *post*, pp. 598, 599, and comments on this case in 78 J. P. N. 367.

Upon the hearing of a complaint to recover expenses under s. 150, the defendant objected that the plans referred to in the notice showed that part of the work had been executed upon land belonging to private owners. The magistrate found as a fact that the land did not belong to private owners, but formed part of the street when the notice was given, and made an order for payment of the amount apportioned. On application for *certiorari* upon affidavits which satisfied the court that the magistrate's finding was contrary to the fact, it was held, assuming that the magistrate had jurisdiction to inquire whether the case was within the statute, that the matter was at least partly within the statute, so as to give the magistrate jurisdiction, and that the remedy was not by *certiorari*. See s. 262, *ante*, p. 582. It was further held that the proper remedy was by appeal under this section against the decision of the authority (*Ex parte Wake*, *R.* v. *Sheffield* (*Recorder of*) (1883), 12 Q. B. D. 142; 48 J. P. 197. See also *Derby* (*Mayor, etc. of*) v. *Grudgings*, *ante*, p. 307).

In *Ex parte Wake*, *supra*, the ground of the decision was that as part of the work was executed upon a street, there was some jurisdiction to make the apportionment. "The complaint," said BRETT, M.R., "is, that although the local authority might properly have determined to pave the street, and might properly have fixed the amount to be expended thereon, yet the sum expended was not on the street only, but was partly on the street and partly on private land, and that therefore the decision of the local authority was wrong; that is to say, that it fixed a wrong sum to lay before the surveyor to apportion, because it had not confined the sum to that which had been expended on the street, but had extended it to a larger sum, part of which had been expended elsewhere than on the street. The complaint, therefore, if anything, is, that the appellant is aggrieved by the decision of the local authority, and consequently it comes within the exact terms of s. 268, which has pointed out the remedy the appellant has, namely, that in respect of that grievance he is to appeal to the Local Government Board. That is the particular remedy pointed out by the statute, and it being one for a grievance in respect of a new liability, it is the only remedy which can be taken. If, therefore, the case was within the statute, the magistrate, upon the summons before him for an order for payment, could not determine whether the decision of the local authority was right

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or wrong; but could only inquire whether the proper notice had been given, and if it had, he could only make the order of payment. It was then said that the magistrate was bound to inquire whether the case was within the statute at all, and that if the local authority had assumed to cast a liability on a person to do that which was not within the Act, as to contribute to the expenditure of paving that which was not a street, and the magistrate found that that was so, and that it was not within the Act at all, then he had no jurisdiction to make the order. But, on the other side, it was said that if the magistrate had jurisdiction to make that inquiry he had jurisdiction in the matter, and if he came to a wrong conclusion there was an appeal to the quarter sessions, but that there it must end, and there was no appeal from the sessions. Now, it may be that the magistrate has power to inquire whether the case is within the Act at all, and if so, and he finds that it is not within the Act, it may be that he has no jurisdiction to make any further order. It may be that he is bound to make that inquiry, and that the only appeal from the conclusion he may come to is to the quarter sessions, or it may be that he has no power to make such inquiry at all. It seems to me to be unnecessary to decide that matter, for even if the magistrate had jurisdiction to inquire whether the case was or was not within the statute at all, and if supposing it was not, he had no jurisdiction to make any further order, I have come to the conclusion that this matter was not wholly without the statute. It would be without the statute if no order at all could have been made by the local authority, but if any part of the expenditure had been made in respect of a street within the meaning of the statute it is obvious that as to that part the local authority might fix the proper sum to be apportioned by the surveyor. Here it cannot be denied that a part of the expenditure was in respect of that which was a street within the meaning of the statute and that the appellant was a frontager on that street, and it therefore follows that an order might be made upon him which would be an order within the meaning of the statute, and all that could be said against it would be that although it might lawfully be made it was a wrong order." And see *Bournemouth Commissioners* v. *Watts* (1884), 14 Q. B. D. 87; 49 J. P. 102. In that case an action was brought by a local authority to recover paving expenses under s. 150. It appeared that part of the work, exceeding £50, had been done by contractors employed by the authority, but that no written contract under the authority's seal had been executed as required by s. 174. It was assumed by SMITH, J., that the objection, if valid, would have been an objection to the apportionment which could have been raised in the time and manner provided by s. 257. But according to the above cases the point might have been raised by appeal under this section. See also *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405. The assumption of SMITH, J., *supra*, is also opposed to *Walthamstow L. B.* v. *Staines*, [1891] 2 Ch. 606, where the court held that an objection to the legality of certain charges for legal and other expenses included in an apportionment under s. 150 could only be raised by way of appeal under this section; and the decision in this case was followed by STIRLING, J., with regard to a similar section in a local Act in *West Hartlepool* (*Mayor, etc. of*) v. *Robinson* (1897), 61 J. P. 200; 75 L. T. 677; affirmed (1897), 62 J. P. 35; 77 L. T. 387. See also *In re Hanwell U. D. C. and Smith*, and the cases cited therewith, at p. 313, *ante*.

In *Eccles* v. *Wirral Sanitary Authority* (1886), 17 Q. B. D. 107; 50 J. P. 596, MATHEW, J., referring to the judgment of the MASTER OF THE ROLLS in the *Penarth Case*, *ante*, p. 596, said: "I should have thought that there was much weight in the argument that the Local Government Board could not be treated as a court having exclusive jurisdiction in a case of this kind. It may be that if a party chooses to resort to that tribunal, he should be bound by what it does. But that it should otherwise be conclusive, is opposed to all principle. It is not a court. No procedure is pointed out, and the idea is that the Board are to pronounce what judgment they choose, though opposed to law and principles of equity, so long as they think it equity. That question is well deserving of very careful consideration, and far more elaborate argument than it was necessary to address to us in this case." The court (MATHEW and SMITH, JJ.) left it undecided whether, on a question whether a street was a highway repairable by the inhabitants at large, a frontager could appeal to the L. G. B. under this section; but an appeal on this ground against a demand for payment would certainly be entertained.

The only mode of questioning an order of a local authority under s. 36, *ante*, p. 96,

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is an appeal to the M. of H. under this section after a demand has been made for the expenses (*Robinson* v. *Mayor, etc. of Sunderland* (No. 2), [1899] 1 Q. B. 751; 63 J. P. 341). If under that section the authority decide not only that the existing accommodation is insufficient, but also that under the particular circumstances of the case a different kind of accommodation is required, *e.g.*, a water-closet instead of a privy, there is an appeal on both points to the Board (*Nicholl* v. *Epping U. D. C.*, [1899] 1 Ch. 844; 63 J. P. 841).

Section 229, *ante*, p. 510, provides for another appeal to the M. of H. against an order of a rural authority apportioning special expenses between contributory places.

It will be observed from s. 257 that, where expenses have to be apportioned, an authority are not in a position to serve a notice of demand until the expiration of three months from the service of the notice of apportionment, or if the apportionment is disputed, until such dispute has been settled by arbitration or withdrawn. In cases where a premature demand has been served by an authority and an owner has appealed against it to the M. of H. the Ministry have pointed out that, as the demand was invalid, there was no statutory notice of decision against which any appeal could be made.

An appeal will apparently lie to the Ministry even if an owner has paid the amount claimed in compliance with a demand for same, but the appeal must of course be within twenty-one days.

Memorial of complaint.

(*c*) The memorial should be to the Minister of Health, and should be forwarded to the Secretary, Whitehall, S.W.1. It should be signed by the party aggrieved, and should state his case clearly, but as concisely as possible. The Ministry will require to be furnished with all the original notices served upon the appellant endorsed with dates of their receipt. The appellant must not omit to send a copy of his memorial to the authority, and it would be well for him to state in his memorial that he has done so. A failure to comply with this requirement within the twenty-one days will probably result in the Ministry refusing to entertain the appeal. When documents required by the Ministry have been mislaid or destroyed, copies should be obtained from the clerk to the authority. The usual practice of the Ministry is to obtain the observations of the authority upon the memorial (of which they should be in possession of a copy), and then, unless the questions in dispute are of such a character that they can be decided otherwise, to direct one of their inspectors to hold a local inquiry, at which both the authority and appellant can be present or represented. Upon consideration of the inspector's report an order is issued.

In *Local Government Board* v. *Arlidge*, [1915] A. C. 120; 79 J. P. 97, the House of Lords held (reversing *R.* v. *Local Government Board, Ex parte Arlidge*, [1914] 1 K. B. 160; 78 J. P. 25), that the Board, on an appeal to them under the Housing, Town Planning, etc. Act, 1909, may act upon written evidence, and need neither hear the appellant orally, nor disclose to him the reports and documents placed before them, and further, that the appellant is not entitled to know the name of the official whose decision the Board's order represents. And see hereon *R.* v. *Housing Tribunal of Appeal*, [1920] 3 K. B. 334; 84 J. P. 252.

Powers of M. of H.

(*d*) As to the powers and duties of the Ministry on such appeal, see *R.* v. *Local Government Board*, *ante*, p. 596. See also *Cook* v. *Ipswich L. B.*, *ante*, p. 306. Where on an apportionment of paving expenses under s. 150, *ante*, p. 286, a frontager addressed a memorial stating the grounds of his complaint to be that the works were unnecessary, and were executed improperly and at too high a price, and that it was inequitable to charge him with the whole expenses, and the L. G. B., after a local inquiry confirmed the apportionment, it was held that on summary proceedings to enforce the apportionment the frontager might take the objection that the street was a highway repairable by the inhabitants at large (*Seabrook* v. *Grays Thurrock L. B.* (1891), 8 T. L. R. 19).

In *Bristol Corporation* v. *Sinnott*, [1918] 1 Ch. 62; 82 J. P. 9 (see *ante*, p. 303), frontagers objecting to a notice under s. 150, *ante*, presented a memorial to the L. G. B. under this section appealing against an apportionment on the ground that the time allowed them to carry out the works was unreasonable. The Board after an inquiry intimated that they were prepared to confirm the apportionment, but the Board made no order, whereupon with the sanction of the Board the appeal was withdrawn. It was held that as no order had been made and the withdrawal of the appeal had been with the Board's sanction the proceedings before the Board did not

estop the frontagers from raising the point as to the validity of the notice in an action to recover the amount of the private streets works charges. **Note to Section 268.**

It is not the practice of the Ministry to furnish either to local authorities or appellants reasons for their decisions or details on which they are based.

(*e*) It is a question how this Order can be enforced. It is not an Order to which s. 294, *post*, p. 627, applies. But according to *R.* v. *Walker* (1875), L. R. 10 Q. B. 355 ; 40 J. P. 230, the local authority might perhaps be indicted for a misdemeanor if they disobeyed it ; and probably obedience might be compelled by *mandamus ; cf. R.* v. *Fulham Guardians*, [1909] 2 K. B. 504 ; 73 J. P. 397. Enforcement of order.

Section 295, *post*, p. 627, provides for the publication of the Order if the Ministry should require it to be published.

269. Where any person deems himself aggrieved (*a*), by any rate made under the provisions of this Act (*b*), or by any order conviction (*bb*) judgment or determination of or by any matter or thing done by any court of summary jurisdiction (*c*), such person may appeal therefrom, subject to the conditions and regulations following (*d*) : Appeal to quarter sessions. [Repealed as to words in italics by 47 & 48 Vict. c. 43, so far as relates to an appeal against an order or conviction of a court of summary jurisdiction.]

(1) The appeal shall be made to the next court of quarter sessions (*e*) *for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made :*

(2) *The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof :*

(3) *The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :*

(4) *Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :*

(5) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment (*f*), and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor (*g*) ; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals (*h*) : Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (*i*) :

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(6) *In the case of other appeals the court of appeal may if it thinks fit adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just* (*k*) :

(7) *The decision of the court of appeal shall be binding on all parties* (*l*), *Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court* (*m*).

Party aggrieved.

(*a*) As to who is a party "aggrieved," see the note to s. 253, *ante*, p. 560. An Improvement Act gave a right of appeal against any order of the commissioners to any person aggrieved by it. At a meeting of ratepayers it was resolved that the commissioners be empowered, out of funds raised under the Act, to promote a Bill for a local Act. The Bill being rejected, the commissioners made an order for payment of the expenses out of the funds. The mover of the original resolution appealed as a ratepayer against this order:—*Held*, that he was precluded from appealing as aggrieved by an act which he had sanctioned (*Harrup* v. *Bayley* (1856), 20 J. P. 627 ; 6 El. & Bl. 218). A mortgagee of licensed premises was held entitled to appeal, as a person aggrieved, against the refusal of justices to renew the licence (*Garrett* v. *Middlesex JJ.* (1884), 12 Q. B. D. 620 ; 48 J. P. 357) ; but an owner of licensed premises is not aggrieved by a conviction of the licensee (*R.* v. *Andover JJ.* (1886), 16 Q. B. D. 711 ; 50 J. P. 549). Nor is the owner of a film which has been hired out a person aggrieved by a notice prohibiting the exhibition of the film served in pursuance of a condition attached to a licence granted under the Cinematograph Act, 1909 (*Ex parte Stott*, [1916] 1 K. B. 7 ; 80 J. P. 169). See also *R.* v. *London JJ.*, *infra* ; *Drapers' Co.* v. *Hadden* (1892), 57 J. P. 200 ; 9 T. L. R. 36 ; *Moss* v. *Hancock*, [1899] 2 Q. B. 111 ; 63 J. P. 517). It would seem that a person who is, by agreement, ultimately liable to pay a rate, may be a person aggrieved by the rate, for it has been held that the words "any person who may feel himself aggrieved by any valuation list" in the Union Assessment Committee Act, 1862, s. 18 (which gives a right to object before the assessment committee), are not confined to a person actually entered in the rate book as a ratepayer, but include a person who, by virtue of an agreement, is under an obligation to refund to the person actually rated any rates which he may be called upon to pay (*R.* v. *Brentford Union* (1907), 71 J. P. 281).

What objections competent.

(*b*) A question was raised in *Ricardo* v. *Maidenhead L. B.* (1857), 21 J. P. 359 ; 2 H. & N. 257, whether an appeal lay against an order of justices ordering payment of a rate which had not itself been appealed against. The court did not decide the question. But the case was decided under the P. H. A., 1848, s. 103 of which enabled justices to enforce a rate by warrant without order. Under the present Act an order is necessary (see s. 256, *ante*, p. 564), and there seems to be no reason why an appeal should not lie. It may still be doubted, however, whether on such appeal an objection could be taken which goes to the validity of the rate as distinguished from the jurisdiction of justices to enforce it. In the case of the poor rate, an appeal does not lie against a warrant to enforce payment until the distress thereunder has been levied (*R.* v. *Lindsey JJ*, [1912] 2 K. B. 413 ; 76 J. P. 311). It has been said that on such an appeal an appellant cannot avail himself of objections which he might have urged against the rate itself on an appeal against it (*R.* v. *Kent JJ.*, *Ex parte Roots* (1867), 16 L. T. 672). The report of this case is very meagre, and *semble* the decision must be taken with some qualification, for it would certainly seem that an objection that a party rated is not an occupier would be open on both appeals. The objections which can be taken before justices when proceedings are taken before them to enforce payment of a poor rate are discussed at 77 J. P. N. 301, 315 ; and see *R.* v. *Hannam* ; *Bates* v. *Plumstead* (*Overseers of*), and other cases cited therewith at p. 565, *ante*.

(*bb*) The general right of appeal given by the provision in the text is not taken away by s. 37 (1) of the Criminal Justice Administration Act, 1914, which confines the right of appeal to those who have pleaded not guilty or have not admitted the truth of the information: see *Mittelmann* v. *Denman*, [1920] 1 K. B. 519; 84 J. P. 39. **Note to Section 269.**

(*c*) For the definition "court of summary jurisdiction," see *ante*, p. 36.

The words "order, conviction, judgment, or determination of or by any matter or thing done by," do not necessarily enable a prosecutor in a criminal matter to appeal if the information laid by him is heard and dismissed. It is a general rule that, except where there is express statutory provision to the contrary, appeal does not lie against a dismissal or acquittal in criminal proceedings. In *Payne* v. *Uxbridge Sanitary Authority* (1881), 45 J. P. 327, information had been laid against the defendants for sending sewage into a tributary of the Thames contrary to the provisions of the Thames Conservancy Act, which gave an appeal "if any person shall feel aggrieved by any adjudication or determination of any justice with respect to any penalty or forfeiture under the provisions of this Act." Sessions having held that this enabled them to hear an appeal from the decision of the justices dismissing the information, the High Court granted a prohibition, holding that the Act gave no appeal when an information was dismissed (*R.* v. *Middlesex JJ.* (1881), 45 J. P. 420). The Highway Act, 1835, s. 105, gives a right of appeal to any person who shall think himself aggrieved by "any order, conviction, or judgment, or determination made, or by any matter or thing done by any justice or other person in pursuance of this Act." A summons under s. 72 for wilfully obstructing a highway was dismissed, and it was held that the informant had no right of appeal (*R.* v. *London JJ.* (1890), 25 Q. B. D. 357; 55 J. P. 56). Lord COLERIDGE, C.J., said: "I do not deny that this is a 'determination made' by the justice, and may be 'a matter or thing done by the justice in pursuance of this Act'; and, therefore, if it were enough to find a word or two in a section of this kind which would carry an appeal, the argument for the appellant would be entitled to succeed, for there are words capable of the meaning contended for. But that is not quite the way in which the section should be regarded, when we are asked to hold that there is an appeal after acquittal, which is primâ facie not given by law. A person is prosecuted for some breach of the law, which is to be proved in a particular way. The general principle of the law is that, if acquitted, he is not to be a second time vexed." This decision was followed under the following circumstances: An officer of the B. corporation summoned a company for allowing liquid refuse to flow into a sewer contrary to the B. Tramways and Improvement Act, 1897, s. 45. The summons having been dismissed, the corporation gave notice of appeal to sessions according to the provisions of the Summary Jurisdiction Acts, claiming a right to appeal under s. 66 of the local Act, which provides that any person deeming himself aggrieved by any conviction or order made by a court of summary jurisdiction under any provision of the Act may appeal to quarter sessions according to the provisions of the Summary Jurisdiction Acts, and that in regard to any such order the corporation may in like manner appeal. The recorder held that the appeal was an appeal against the dismissal of an information, and that inasmuch as the corporation were, in consequence of such dismissal, not persons deeming themselves aggrieved, s. 66 did not confer upon them any right of appeal:—*Held*, refusing a *mandamus* to the recorder, that the words "the corporation may in like manner appeal" referred back, not merely to the machinery of the Summary Jurisdiction Acts, but also to the words "any person deeming himself aggrieved," and, therefore, did not give the corporation a right of appeal against the dismissal of an information (*R.* v. *Wright, Ex parte Bradford Corporation* (1907), 72 J. P. 23). See also *Foss* v. *Best*, [1906] 2 K. B. 105; 70 J. P. 383. No appeal against acquittal.

(*d*) The S. J. A., 1879, s. 32, provides as follows: "Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded." Procedure on appeal.

The S. J. A., 1884, repealed the text from the words "for the county," in sub-s. (1) to the end of sub-s. (4), and also sub-ss. (6) and (7) *so far as relates to an appeal*

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against an order or conviction of a court of summary jurisdiction. The same Act provides (s. 6) that all appeals must now be brought subject to the conditions and regulations of the S. J. A., 1879; and the procedure under that Act must now be followed in appeals under this Act against any conviction or order of a court of summary jurisdiction. See *Shingler* v. *Smith* (1886), 17 Q. B. D. 49; 51 J. P. 152; *R.* v. *Glamorganshire JJ.* (1889), 22 Q. B. D. 628; 53 J. P. 294. That procedure is contained in s. 31 of the Act of 1879, which is as follows:

"Where any person is authorised . . . to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

"(1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and

"(2) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and

"(3) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient; and

"(4) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

"(5) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction or remit the matter, with the opinion of the court of appeal thereon to a court of summary jurisdiction acting for the same county borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

"(6) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

"(7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post."

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The foregoing section supersedes the procedure in the text only in so far as the latter relates to an appeal from a conviction or order of a court of summary jurisdiction. Other appeals, such as appeals against rates, will continue to be regulated by the text.

Several important decisions bearing upon the construction of s. 31 of the Act of 1879 should here be noted. On the hearing of an appeal it appeared that two notices of appeal had been given within the prescribed time. The appellant elected to proceed upon the second, which was found bad for want of the prescribed recognizance. It was held that the first remained good, and that the appellant was entitled to proceed upon it after failing on the second (*R.* v. *Wolverhampton* (*Recorder of*) (1888), 36 W. R. 650). Under sub-s. (1):—As to the "next practicable" court, see note (*e*), *infra*; "not less than fifteen days" means fifteen "clear days" (*Re Railway Sleepers Co., Ltd.* (1885), 29 Ch. D. 204); Sunday counts as a day (see p. 554, *ante*). Under sub-s. (2):—Service of notice of appeal is sufficient if served on the justices' clerk, and it is not necessary that it should be addressed to the convicting justices (*R.* v. *Essex JJ.*, [1892] 1 Q. B. 490; 56 J. P. 375; *R.* v. *Glamorganshire JJ.*, [1892] 1 Q. B. 621; 56 J. P. 437). Service on the solicitor of the "other party" to the appeal is not effective unless such solicitor has received instructions to accept service (*R.* v. *Oxfordshire JJ.*, [1893] 2 Q. B. 149; 57 J. P. 712). Even where a notice of appeal is not posted, personal service is not essential (*R.* v. *Somersetshire JJ.* (1900), 69 L. J. Q. B. 311; 64 J. P. 341; *R.* v. *North Riding of Yorks JJ.* (1845), 7 Q. B. 154). Service on the "other party" will be dispensed with if he dies before it can be effected (*R.* v. *Leicestershire JJ.* (1850), 15 Q. B. 88). Under sub-s. (3):—The recognizance must not be taken (nor a deposit in lieu thereof fixed) before the notice of appeal has been given (*R.* v. *Anglesey JJ.*, [1892] 2 Q. B. 29; 56 J. P. 552; *R.* v. *Cheshire JJ.* (1896), 60 J. P. 585). It may be entered into before any court of summary jurisdiction, whether in the same county or not, provided the court has the notice and grounds of appeal before it (*R.* v. *Durham JJ., Ex parte Newton*, [1895] 1 Q. B. 801; 59 J. P. 264). The time limit for entering into the recognizance must be strictly observed (*Ex parte Grafton Club* (or *Ashton*) (1912), 76 J. P. 383; 28 T. L. R. 473). As to the form of recognizance where a local authority are appellants, see *Cortis* v. *Kent Waterworks Co.* (1827), 7 B & C. 314, at p. 331; *R.* v. *Mayor, etc. of Manchester* (1857), 7 El. & Bl. 453; *Southern Counties Deposit Bank* v. *Boaler* (1895), 59 J. P. 536; 73 L. T. 155. See for a full discussion of this question 60 J. P. 33; and see also as to a corporate body entering into a recognizance, *R.* v. *Antrim JJ.*, [1906] 2 I. R. 298. Although quarter sessions, in consequence of a recognizance being out of time, have no jurisdiction to hear an appeal, they have jurisdiction to estreat the recognizance for non-payment of costs (*R.* v. *Glamorganshire JJ.* (1890), 24 Q. B. D. 675; 55 J. P. 39).

For a decision under a local Act that an objector to the renewal of a licence is "not a party" to an appeal against the refusal of the licence, see *R.* v. *Ashton* (1915), 79 J. P. 444; 85 L. J. K. B. 27, and for another decision under a local Act that r. 58 of the S. J. Rules, 1915, impliedly repealed a provision for a four days' notice under the local Act, see *Edelsten* v. *L. C. C.*, [1918] 1 K. B. 81; 81 J. P. 294.

As a general rule the justices whose decision is appealed against should not appear at sessions to support it and cannot be ordered to pay costs (*cf. Ex parte Curtis* (1877), 3 Q. B. D. 13; 42 J. P. 87; *R.* v. *London JJ.*, [1895] 1 Q. B. 616; 59 J. P. 820).

As to the power of sessions to amend defective grounds of appeal or recognizances, see ss. 3, 8, 9 of the Quarter Sessions Act, 1849; as to their general power over costs, see *ibid.*, ss. 4, 5, 6; and as to their power when an appellant dies before the hearing, see *R.* v. *Spokes* (1912), 76 J. P. 354; 107 L. T. 290. If sessions refuse to award costs, exercising a judicial discretion, the High Court will not interfere (*R.* v. *Notts JJ.* (1910), 73 J. P. 183). In a "criminal cause or matter" no appeal lies from a Divisional Court to the Court of Appeal on the subject of costs given by sessions (*R.* v. *Wilts JJ.*, [1912] 1 K. B. 566; 76 J. P. 169).

Apparently the death of the respondent does not cause the appeal to abate (*R.*

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v. *Leicestershire JJ., supra ; R.* v. *Truelove* (1880), 5 Q. B. D. 336 ; 44 J. P. 346 ; *Garnsworthy* v. *Pyne* (1871), 35 J P. 21). As to the death of an appellant, see *R.* v. *Spokes, supra ; Cooke* v. *Cooper*, [1912] 2 K. B. 248 ; 76 J. P. 67 ; *R.* v. *Cork JJ.* (1913), 47 Ir. L. T. 168, and *cf. Finchley U. D. C.* v. *Blyton* (1913), 77 J. P. N. 556.

An appeal to sessions is a rehearing, and either party may call fresh evidence without notifying his intention of so doing.

A "respite" of an appeal at the request of the respondents does not, *semble*, preclude them from taking a preliminary objection to notices, etc., when it ultimately comes on (*Rhondda Valley Brewery Co.* v. *Pontypridd Union*, [1909] 1 K. B. 652 ; 73 J. P. 177).

Appeal to what sessions.

(*e*) Where an adjourned sessions intervenes, the time must be calculated with reference to the first day of the next quarter sessions, and not with reference to the first day of the adjourned sessions (*R.* v. *Lancashire JJ.* (1876), 40 J. P. 438 ; 34 L. T. 124). And see *Rawnsley* v. *Hutchinson* (1871), L. R. 6 Q. B. 305 ; 35 J. P. 501.

The phrase "next sessions" means the next sessions at which an effectual trial can be had after the proper notices have been given. Therefore, where a rate was made on March 20th, and the notices for the next quarter sessions, held on April 6th, must have been given on March 22nd, it was held that the appeal might be brought at the July quarter sessions without being entered and respited at the April sessions (*R.* v. *Surrey JJ.* (1880), 6 Q. B. D. 100 ; 45 J. P. 93).

In another case all the preliminaries to an appeal at the next quarter sessions were duly observed, but at the sitting of the court sessions refused to allow the appeal to be entered, on the ground that by a rule of the sessions an appeal must be entered and grounds of appeal deposited with the clerk of the peace three clear days before the first day of the sessions ; the sessions also made an order for £10 costs to the respondents, under 12 & 13 Vict. c. 45, s. 6, as on an appeal which had not been entered or prosecuted. On a rule to quash this order :—*Held*, that the rule of sessions amounted to imposing an additional condition to the appeal which the statute had not imposed, and was more than a mere rule of practice which it might be competent for sessions to make ; and that the order for costs must be quashed (*R.* v. *Pawlett* (1873), L. R. 8 Q. B. 491 ; 37 J. P. 775).

It has already been stated that the repeal of a portion of this section effected by the S. J. A., 1884, is only a repeal so far as relates to appeals from convictions or orders of a court of summary jurisdiction. The definition of the term "court of summary jurisdiction," in the Interpretation Act, 1889, s. 13, extends its meaning so as to include justices acting under any statute or by virtue of his or their commission or by the common law. The new procedure as to appeals will, therefore, apply to nearly every act or decision of justices under this Act. See *R.* v. *Glamorganshire JJ., supra*, and the cases cited at p. 602, *ante*. But there are some matters to which it will not apply, and with regard to which the procedure prescribed in the text must still be followed. Notably this is the case in appeals against rates, which are not convictions or orders. In *R.* v. *Barnet Rural Sanitary Authority* (1876), 1 Q. B. D. 558 ; 40 J. P. 341, an order was made on the appellants, under s. 48, *ante*, on September 6th, and served on them on the 24th. The appellants on October 2nd served notice of appeal to sessions. It was held that the time for notice of appeal ran from the date of the decision, and not from the service of the order of justices, and consequently that the notice was too late. BLACKBURN, J., said : "Where the appeal is against a rate, the 'cause of appeal' would primâ facie be upon notice of the rate, but where the appeal is from any order or conviction, one would certainly primâ facie say that as soon as the order is made the party has a right to appeal, and is not bound to wait until the order is served." *Cf.* s. 31 (1) of the S. J. A., 1879, *supra*. An appeal against a distress for poor rates is not an appeal against "an order of a court of summary jurisdiction," and is therefore not regulated by the S. J. A., 1879, s. 31 (*R.* v. *Lindsey JJ.*, [1912] 2 K. B. 413 ; 76 J. P. 311).

It is to be noticed also that the new enactment requires that the notices of appeal shall be in writing ; this was formerly unnecessary.

Where sessions have refused to hear an appeal on the ground of the insufficiency of the notices, and a *mandamus* is applied for to compel them to hear, the court will, upon the argument against the rule, determine the question of the sufficiency or insufficiency of the notices (*Curtis, Ex parte* (1877), 3 Q. B. D. 13 ; 42 J. P. 87).

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(*f*) Therefore, it was held that sessions might quash a rate which showed by the estimate prefixed to it that it was made for illegal purposes (*R.* v. *Worksop L. B.* (1857), 21 J. P. 451; see also *Smith* v. *Southampton Corporation*, in notes to s. 210, at p. 474). If an appellant does not appeal against the gross estimated rental as it appears in the rate book and valuation list, sessions may not admit evidence tendered by the rating authority to show that the gross estimated rental has been understated (*Horton* v. *Walsall Union*, [1898] 2 Q. B. 237; 62 J. P. 437; *Hendon Paper Works Co., Ltd.* v. *Sunderland Union*, [1915] 1 K. B. 763; 79 J. P. 113 (and see also (1915), 79 J. P. N. 220); *John Fowler & Co.* v. *Hunslet Union*, [1917] 1 K. B. 720; 81 J. P. 118).

Powers of court on appeal.

(*g*) 41 Geo. 3, c. 23, ss. 1—6, and 6 & 7 Will. 4, c. 96, s. 7, provide for the amending and quashing of poor rates, and 17 Geo. 2, c. 38; 41 Geo. 3, c. 23, s. 8; and 6 & 7 Will. 4, c. 96, s. 7, provide for the awarding and recovery of costs in appeals against such rates. In *R.* v. *Recorder of Leeds* (*ex parte John Fowler & Co*), [1919] 1 K. B. 671; 83 J. P. 169, an appeal had been heard at quarter sessions to reduce the gross and rateable values of certain premises. The gross value only was reduced and the appeal dismissed with costs. The Divisional Court held that the Recorder had jurisdiction to dismiss the appeal as it had really been fought on the question of rateable value, which in fact had not been reduced.

Costs.

See, as to an order in which an appeal was allowed "with costs here and below," *Hendon Paper Works Co.* v. *Sunderland Assessment Committee* (1915), 79 J. P. N. 220.

(*h*) That is, in one of the following modes: (1) By indictment for disobedience of the order of sessions; (2) by order enforced as provided by 12 & 13 Vict. c. 45, s. 5, *i.e.*, by distress under 11 & 12 Vict. c. 43, s. 27 (*R.* v. *Huntley* (1854), 23 L. J. M. C. 106; 3 El. & Bl. 172); and (3) by removal of the order into the King's Bench Division to be thereafter enforced as a rule of court by the ordinary writ of execution (12 & 13 Vict. c. 45, s. 18).

Recovery of costs.

(*i*) This provision is the same as that in 41 Geo. 3, c. 23, s. 1, respecting the poor rate. Under that section it was held that where a rate was reduced on appeal and the person rated had during the appeal paid on the unreduced assessment, the overseers might, in subsequent rates, credit him for the excess paid without an order of sessions (*R.* v. *Parker* (1857), 21 J. P. 549; 7 El. & Bl. 155). And see also as to the construction of the section, *R.* v. *Kingston JJ.* (1858), 27 L. J. M. C. 199; 23 J. P. 4, 5.

Levy of rate notwithstanding appeal.

(*k*) This sub-section and the next are repealed so far as relates to an appeal against an order or conviction of a court of summary jurisdiction by the S. J. A., 1884, s. 6 of which substitutes the corresponding provisions of the Summary Jurisdiction Acts.

Repealed provisions.

With reference to the provision as to costs, it must be observed that this enactment gives no power to award costs against convicting justices (*R.* v. *Goodall* (1874), L. R. 9 Q. B. 557; 38 J. P. 616). An information was laid by M., the surveyor of a local board, but without reference to his official position, against H., for violation of a byelaw, and H. was convicted and ordered to pay £7 10*s.* to the local board for costs. H. gave notice of appeal to the convicting justices and to M. The justices and M. handed over their notices to the board's solicitor, who conducted the defence on behalf of the board. Sessions quashed the conviction with costs, to be paid by "the respondents." The costs were taxed, and being unpaid, an application was made to justices for a warrant against the goods of M. for the amount:—*Held*, first, that the order of sessions was bad in ordering the costs to be paid by the respondents, who were the convicting justices, and M., and that it should have been made upon the local board, who were the real parties appealed against; and, secondly, that as the order was valid, except in so far as it related to costs, it should be quashed as to that part only (*R.* v. *Davidson* (1871) 35 J. P. 500; 24 L. T. 22).

As to the costs on reference of appeals to arbitration, see *Southampton Gas Light and Coke Co.* v. *Southampton Union* (*Guardians of*) (1877), 2 Q. B. D. 371; 41 J. P. 645; *West London Extension Rail. Co.* v. *Fulham Union* (1870), L. R. 5 Q. B. 361; 36 J. P. 55; *R.* v. *Middlesex JJ.* (1871), L. R. 6 Q. B. 220; *N. E. Rail. Co.* v. *York Union* (1902), 66 J. P. 457.

As to taxingcosts out of sessions, see *R.* v. *Phillips* (1873), 37 J. P. 824; 29 L. T. 100; *Midland Rail. Co.* v. *Edmonton Union*, [1895] A. C. 485; 60 J. P. 68; *R.* v. *Cumberland JJ.* (1903), 68 J. P. 153.

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(*l*) The procedure at the hearing of the appeal is regulated by "Baines' Act," now called the Quarter Sessions Act, 1849, to which reference should be made.

(*m*) A *certiorari* is not now necessary to bring up the case (S. J. A., 1879, s. 40).

Practice as to case stated by sessions.

As to stating a case when the statute concerned declares the decision of sessions to "be final," see *Kydd* v. *Liverpool Watch Committee*, [1908] A. C. 327; 72 J. P. 395. As a general rule a point not taken at the hearing before sessions cannot be taken upon the argument of a special case; but the case may be stated in such a form as to compel the High Court to decide a fresh point (*cf. Smith's Dock Co.* v. *Tynemouth Corporation*, [1908] 1 K. B. 315; 72 J. P. 64).

Upon an application to enter and respite an appeal, sessions have no power to state a special case; and the court will take no notice of a case so stated. Where sessions granted an application to enter and respite appeals against poor rates, subject to a case, the court heard the arguments, but after consideration, and although no objection was raised by either side, declined to express an opinion (*R.* v. *Sutton Coldfield* (*Overseers of*) (1874), L. R. 9 Q. B. 153; 38 J. P. 166).

When sessions consent to state a case, their order sent up with the case ought, in order to give the High Court jurisdiction, to state the fact that a case has been stated (*L. & N. W. Rail. Co.* v. *Ampthill Union* (1905), 94 L. T. 314).

After notice of appeal, a case may be stated by consent, without going to sessions, under 12 & 13 Vict. c. 45, s. 11. Where this is done the case should contain a statement of the agreement of the parties that judgment in conformity with the decision of the court may be entered at sessions in manner provided by the section, otherwise it will be struck out of the paper (*Peterborough* (*Corporation of*) v. *Thurlby* (*Overseers of*) (1882), 8 Q. B. D. 586).

A case contained the following paragraph: "If the court should be of opinion that the appeal ought to have been allowed and the order quashed, judgment for the appellant is to be entered accordingly at the next quarter sessions." Before hearing counsel the court dismissed the appeal and affirmed the order, holding that the sessions ought not to state anything about afterwards entering the appeal at sessions as if the whole jurisdiction rested with them, and an opinion only was asked of the High Court. The statement of the case was an end of the jurisdiction of the sessions, which had nothing further to do with the matter. No opinion was given on the merits (*R.* v. *Headington Union* (1883), 47 J. P. 756). On appeal the Court of Appeal suggested, and the parties agreed, that the case should be treated as if the objectionable paragraph were struck out, and the case was then argued on the merits (50 L. T. 444).

A case contained the following clause: "The court are in all respects to exercise the power of the sessions to confirm, amend, alter, vary, modify, or reverse their decision in such manner and to such extent as to such court shall seem expedient and proper; costs to follow the event." The court quashed the order, but the judgment was silent as to costs. In an action to recover the costs incurred in the argument of the case, and also the cost of certain applications made to the sessions from time to time before judgment of the High Court in the plaintiff's favour was obtained:—*Held* (1) that the words "costs to follow the event" referred and were intended to refer to the costs claimed by the plaintiff; (2) that these words, though contained in a special case, amounted to an agreement between the parties, and rendered the defendant liable to pay the costs; and (3) that taxation of the costs was not a condition precedent to the plaintiff's right to bring an action to recover them (*Lear* v. *Botting* (1880), 45 J. P. 240; 44 L. T. 58).

Section 2 of the Judicature Act, 1894, applies to the hearing in the High Court. By sub-s. (1) of that section every case stated by a court of quarter sessions otherwise than under the Crown Cases Act, 1848, and the Quarter Sessions Act, 1849, for the consideration of the High Court, shall be deemed to be an appeal and be heard and determined accordingly. Therefore, under s. 1 (5) of the same Act it must be heard and determined by a Divisional Court constituted as may be prescribed by rules of court. By sub-s. (2) on the hearing of any appeal from a court of quarter sessions, the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on

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it, with the opinion or direction of the appellate court, for rehearing and determination by the court of quarter sessions, or may remit the case for restatement. Therefore, it would seem that the Divisional Court may make any order as to costs in the court of summary jurisdiction which the court of quarter sessions ought to have made. See *Barnett* v. *Mayor, etc. of Eccles*, [1900] 2 Q. B. 423, 424 n. As to the power of the court under this sub-section to draw inferences, see *Dairy Supply Co.* v. *Houghton* (1911), 76 J. P. 43; 106 L. T. 220; *Cababé* v. *Walton-on-Thames U. D. C.*, p. 275, *ante*, *per* Lord DUNEDIN; *Hickton* v. *Hodgson* (1914), 78 J. P. 93; *Mitchell* v. *Croydon JJ.* (1914), 78 J. P. 385; 111 L. T. 632; *Davis & Sons* v. *Pontypridd Union* (1916), 80 J. P. 377; 14 L. G. R. 932.

By sub-s. (3) on the hearing of any such appeal, the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne. And by sub-s. (4) the judgment on any such appeal, or where an appeal to a court of quarter sessions has been directed to be entered for rehearing, then that appeal shall, on the motion by any party to the appeal, be entered at the sessions next or next but one after the delivery of the judgment or the giving of the direction, and shall, unless the appellate court otherwise directs, have effect as if the judgment had been given, or, in the case of an appeal directed to be reheard, the appeal had been heard and determined by the court of quarter sessions at the time of the decision in respect of which the appeal from quarter sessions was brought, and entry and respite of any appeal to quarter sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary.

Appeal from High Court.

It was held that an appeal did not lie from the decision of the High Court on a case stated under the text, unless leave to appeal was given under 36 & 37 Vict. c. 66, s. 45 (*R.* v. *Swindon L. B.* (1880), 49 L. J. Q. B. 272; 44 J. P. 505). In that case an order had been made by justices upon one H. to pay expenses under s. 150, *ante*, p. 286. H. appealed to sessions, who quashed the order subject to a special case. The High Court having affirmed the decision of sessions, the local board appealed to the Court of Appeal. It was held that the High Court in hearing the case were exercising an appellate jurisdiction, as the case came before them under the P. H. A., 1875, s. 269 (7). The appeal was, therefore, an appeal from an inferior court within the Judicature Act, 1873, s. 45; and the decision of the High Court was final unless leave to appeal were given. Leave to appeal was formerly not necessary when the High Court, in the exercise of its common law jurisdiction, decided a special case stated by sessions (*R.* v. *Savin* (1880), 6 Q. B. D. 309; *Illingworth* v. *Bulmer East Highway Board* (1884), 53 L. J. M. C. 60). After notice of appeal against a poor rate had been given, the parties agreed under 12 & 13 Vict. c. 45, s. 11, to state a case for the opinion of the High Court, judgment to be entered by sessions in conformity with that opinion:—*Held*, that the opinion given by the High Court was an order within the meaning of the Judicature Act, 1873, s. 19, and was, therefore, subject to appeal, and that the order was interlocutory and not final, as the case had to be sent back for judgment to be entered by sessions (*Peterborough* (*Mayor of*) v. *Stamford Union* (1883), 12 Q. B. D. 1; 48 J. P. 373). This decision was followed in *Holborn Union* v. *Chertsey Union* (1885), 15 Q. B. D. 76; 50 J. P. 36, where it was held that an appeal lay to the Court of Appeal from the decision of a Divisional Court upon a case stated under 12 & 13 Vict. c. 45, s. 11, on an appeal from an order of justices to the sessions; it not being a decision of a Divisional Court on an appeal from petty or quarter sessions within the meaning of the Judicature Act, 1873, s. 45, and being an "order" within the meaning of s. 19 of that Act. And see to the same effect, *Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Union* (1886), 2 T. L. R. 375. Now, it being provided by the Judicature Act, 1894, s. 2 (1), as above mentioned, that every case stated by a court of quarter sessions, otherwise than under 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, for the consideration of the High Court, shall be deemed to be an appeal, and shall be heard and determined accordingly, this brings in s. 1 (5), providing that in all cases where there is a right of appeal to the High Court from any court or person the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court; and the determination thereof by the Divisional Court shall be final unless leave to appeal is given by that court or by the Court of Appeal. Under this subsection the Court of Appeal may give leave to appeal though the Divisional

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Court has refused leave (*Holland* v. *Girling* (1899), 43 Sol. J. 600; *Godman* v. *Moses* (1900), 69 L. J. Q. B. 823; 83 L. T. 46). And the appeal to the Court of Appeal lies notwithstanding that judgment has been entered by sessions in conformity with the decision of the Divisional Court (*Lodge* v. *Mayor, etc. of Huddersfield* (No. 2), [1898] 1 Q. B. 859; 62 J. P. 515). In a "criminal cause or matter" (see p. 552, *ante*), no appeal lies to the Court of Appeal.

Arbitration on appeals to quarter sessions.

It may be convenient here to set out the provisions of the 12 & 13 Vict. c. 45, as to references to arbitration on appeals to quarter sessions. It is provided by s. 12 that at any time after notice given of appeal to any court of quarter sessions against any order, rate, or other matter (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of exercise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attorneys, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions. By s. 13 it shall be lawful for any court of quarter sessions before which any appeal (except against a summary conviction, etc.) shall be brought, to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court.

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

Alteration of Areas (a).

Powers of Local Government Board in relation to alteration of areas.

270. The following enactments shall be made as to alteration of areas:

(1) The Local Government Board, by Provisional Order, may dissolve any local government district, and may merge any such district in some other urban or rural district or districts; or it may by Provisional Order declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district; or it may by Provisional Order declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such Order; and the remaining part (if any) of the local government district or rural district affected by such Order shall continue subject to the like jurisdiction as it would have been subject to if such Order had not been made

unless and until the Local Government Board by Provisional Order otherwise directs : Section 270.

(2) In the case of a borough comprising within its area the whole of an improvement Act district, or having an area co-extensive with such district, the Local Government Board by Provisional Order may dissolve such district (*b*) and transfer to the council of the borough all or any of the jurisdiction and powers of the improvement commissioners of such district remaining vested in them at the time of the passing of this Act :

(3) The Local Government Board may by Order dissolve any special drainage district (*c*) constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the Local Government Board may by Provisional Order dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated (*d*).

(*a*) The provisions of s. 270 (1), (2), and of the succeeding five sections, are practically superseded by those of the L. G. A., 1888, s. 57 of which gives to county councils important powers as to the formation and alteration of urban and rural districts, the division of urban districts into wards, etc. : see that section and notes thereto, *post*. The provisions of the text are not repealed, but the M. of H. following the practice of the L. G. B. invariably decline to avail themselves of their powers thereunder.

It will be seen that the M. of H. have power under the Act of 1888 to modify certain orders made by county councils, and disallow such orders upon appeal.

(*b*) See the L. G. A., 1888, s. 52, *post*, the notes thereto, and the orders made under it.

(*c*) See s. 277, *post*, p. 614. Prior to 1875, these districts were formed under 29 & 30 Vict. c. 90, s. 5, and 30 & 31 Vict. c. 113, s. 6.

(*d*) Where there has been no loan, the dissolution may be effected by a simple order. Where a loan has been raised there must be a Provisional Order, to be duly confirmed by Act of Parliament : see s. 297, *post*, p. 629. A Provisional Order is required even if a loan has been wholly liquidated.

Procedure must first be taken under this section if it is proposed to effect an alteration of the boundaries of a special drainage district. It must be dissolved and reconstituted.

271. The Local Government Board may, by Provisional Order, declare any rural district, or any portion of any rural district or districts, to be a local government district ; and from and after the commencement of the Order, the district or portion of the district or districts therein referred to shall become a local government district (*a*), and shall be subject to the jurisdiction of a local board, *to be elected in manner provided by Schedule II. to this Act* (*b*). Local Government Board may by Provisional Order constitute local government district.

The Local Government Board may, by any Order constituting a local government district under this section, divide such district into wards for the election of members of the local board.

See note (*a*) to preceding section.

(*a*) A serious nuisance having been admittedly caused by a rural authority's mode of dealing with the sewage of its district, the dissolution of the rural authority

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and the constitution by Order of the L. G. B. of an urban authority over the district, was held not to absolve the new board from liability to an injunction for continuing the nuisance without taking any effectual steps to remedy it. Eleven months having elapsed since the constitution of the new board, the operation of the injunction was suspended for two months only (*Taylor* v. *Friern Barnet L. B.*, W. N. (1885), p. 7).

(*b*) This Schedule is now repealed by the L. G. A., 1894, s. 89, Sched. II., *post*.

Local Government Board may by order constitute local government district in pursuance of a resolution of owners and ratepayers.

272. The owners and ratepayers of any place situated in any rural district or districts, and having a known and defined boundary (*a*), may, by a resolution passed in manner provided by Schedule III. to this Act, declare that it is expedient that such place should be constituted a local government district; and the Local Government Board may, if it thinks fit, by Order made not less than six weeks after the receipt of a copy of such resolution by the said Board, declare such place to be a local government district, and from and after the commencement of such Order such place shall become a local government district, and be subject to the jurisdiction of a local board *to be elected in manner provided by Schedule II. to this Act* (*b*).

A petition may be presented to the Local Government Board from any place (*c*) so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the Local Government Board may require. The Local Government Board may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne.

Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary.

See note (*a*) under s. 270, *ante*, p. 609.

Boundary.

(*a*) Doubtless general reputation is referred to, and that is frequently a matter of considerable uncertainty. The boundaries of parishes are for the most part well known, and so are those of townships and chapelries, especially where these make their own poor rate separately. There are also many places where the boundaries have been defined by statute. It occasionally happens that districts have been settled by Orders in Council and similar authority under the general statutes applicable to new ecclesiastical parishes. Thus a district formed for ecclesiastical purposes under 6 & 7 Vict. c. 37, consisting of parts of two townships, each of which separately maintained its own poor and highways, was held to be "a place having a known and defined boundary" (*R.* v. *Northowram and Clayton* (*Ratepayers*) (1865), L. R. 1 Q. B. 110; 30 J. P. 181). In another case the parish of L., containing 1,400 acres, comprised within its area the corporate borough of L., which was in extent 100 acres. The parliamentary borough of L. comprised the whole of the parish of L. and part of another parish. It was held that the parliamentary borough, including within its limits a less place, viz., the parish of L., was not within the corresponding provisions of the Act of 1858, but that the parish of L. was a place having a known

and defined boundary (*R.* v. *Hardy* (or *Home Secretary*) (1868), L. R. 4 Q. B. 117; 33 J. P. 21). **Note to Section 272.**

(*b*) This Schedule is now repealed by the L. G. A., 1894, s. 89, Sched. II., *post.*

(*c*) The term *place* is very indefinite. As to the interpretation of this word in statutes, see *R.* v. *Charlesworth* (1851), 20 L. J. M. C. 181; *Smith* v. *Redding* (1866), L. R. 1 Q. B. 489; 30 J. P. 518; *Rice* v. *Slee* (1872), L. R. 7 C. P. 378; 36 J. P. 454.

Objection to resolution.

273. Where not less than one-twentieth of the owners and ratepayers of any place (such twentieth to be one-twentieth in number of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place,) in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection.

Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.

The Local Government Board may after local inquiry make Order with respect to the matter in question, and such Order shall be binding on the place in respect of which it is made.

The section may be regarded as obsolete. See note (*a*), to s. 270, *ante*, p. 609.

Appeal to Local Government Board in case of alleged invalidity of vote.

274. Any owner or ratepayer who disputes the validity of the vote for the adoption of the resolution may appeal, within six weeks from the declaration of the decision of the meeting, to the Local Government Board, setting forth the grounds on which he disputes the validity of the vote; and the Local Government Board may, on such appeal, after local inquiry, make such Order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal.

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof, or to any proceedings on which such order was founded, unless the objector gives fourteen days notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district.

The section may be regarded as obsolete. See note (*a*), to s. 270, *ante*, p. 609.

General provisions as to orders.

275. Every Order made by the Local Government Board under this part of this Act shall specify a day on which such Order shall come into

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operation (in this Act referred to as the commencement of the Order): and from and after the commencement of the Order all the powers rights duties capacities liabilities obligations and property which under this Act are exercisable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such Order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district (*a*): Provided that in the case of the constitution of a new local government district, all the powers rights duties capacities liabilities obligations and property which under this Act (*b*) are exercisable by or attaching to or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exercisable by attached to and vested in such authority or authorities, until the day of the first meeting of the local board for the district so constituted.

Any Order made in pursuance of this part of this Act may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any powers conferred by this part of this Act (*c*), and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this part of this Act, the Order shall prescribe the number of members to be elected for the district when altered.

The Local Government Board may include in the same Order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

See note (*a*), to s. 270, *ante*, p. 609.

(*a*) See as to the transfer of liabilities, *Sinnott* v. *Whitechapel Board of Works* (1858), 27 L. J. C. P. 177; 22 J. P. 290; *Pettiward* v. *Metropolitan Board of Works* (1865), 34 L. J. C. P. 301; 12 L. T. 764.

(*b*) In 1875 a perpetual injunction was decreed against the corporation of B. as the sanitary authority of B., restraining them from allowing sewage to flow into a river so as to be injurious to health or a nuisance to the plaintiffs; but the injunction was suspended for five years, to give the corporation an opportunity to execute certain works. After the expiration of that time the plaintiffs desired to enforce the injunction, but in the meantime the B. T. & R. district board had been constituted under this Act as the sanitary authority of the district, in the place of the corporation of B. The plaintiffs brought an action against the board, claiming a declaration that they were entitled to the same benefit of the decree against the board in that action as if they had been defendants in the former suit:—*Held*, that the B. T. & R. board were not by this section made subject to any of the liabilities of their predecessors except those attaching under the Act, and were not, therefore, bound by the decree of 1875, and that there being no allegation of any nuisance committed by the board, the plaintiffs had no cause of action (*Att.-Gen.* v. *Birmingham, Tame and Rea Drainage Board* (1881), 17 Ch. D. 685; 46 J. P. 36).

(*c*) See further, s. 304, now, however, practically replaced by the L. G. A., 1888, s. 62.

276. The Local Government Board may, on the application (*a*) of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value (*b*) of such district, or of any contributory place therein, by Order to be published in the London Gazette, or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any (*c*) of the powers rights duties capacities liabilities and obligations of an urban authority under this Act; and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach: Provided that an Order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

Section 276. Local Government Board may invest rural authority with powers of urban authority.

See further as to investing a rural authority with urban powers, the P. H. A., 1890, s. 5, and the Private Street Works Act, 1892, s. 4, *post*; and see also the L. G. A., 1894, s. 25 (5), whereby rural district councils may have conferred upon them such powers, duties, and liabilities of urban authorities under the Public Health Acts as the L. G. B. shall by *General Order* direct, and *ibid.*, s. 25 (7), which provides that the powers of the L. G. B. under s. 276, *supra*, or under any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish, on the application of the parish council of that parish. M. of H. must of course now be read for L. G. B.

(*a*) The application should be addressed to the Minister of Health, under cover to the Secretary, and if it comes from the rural authority, should be forwarded by their clerk. In the case of an application by ratepayers the Ministry will probably require some proof that the applicants are together rated to the required amount. Such applications are, however, now rare, since the parish council can apply. As it is not the practice of the M. of H. to entertain applications, whether in regard to the whole or to part of a rural district, for *all* the powers conferred by the Public Health and other Acts upon urban authorities, every application should indicate by reference to sections or parts of sections the precise powers desired and the names of the parishes concerned, and should be accompanied by a statement of the circumstances which have led up to the proposal.

Application for order.

The practice of the M. of H. with reference to the grant of urban powers to rural authorities is explained in the notes to the sections dealing with the various subjects. See, for example, ss. 39, 66, 112, 150, 154, 160, 161, 169, of the present Act, s. 5 of the P. H. A., 1890, etc.

As to the delegation of powers by a R. D. C. to a parish council or parochial committee, see s. 202 and notes thereto.

Powers conferred upon rural sanitary authorities by Orders issued under this section prior to the L. G. A., 1894, were transferred to their successors, the rural district councils, by s. 25 of that Act. Questions sometimes arise, however, as to the survival or otherwise of powers declared to be operative by order under this section in parishes which have subsequently been altered by orders of county councils under the L. G. A., 1888 and 1894. In such cases it is advisable for the rural district council to consult the Board in the matter, and, if so advised, to apply for a new Order.

The Board do not ordinarily confer urban powers upon a rural district council in respect of part only of a contributory place, in view of the fact that the incidence of expenses cannot be so limited.

An Order under the section will not legalise expenditure incurred by a rural district council before they possessed the necessary powers.

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In some instances Orders issued under the section have been subsequently rescinded. Thus, in a case in which a parish council were desirous of undertaking the lighting of their parish under the L. G. A., 1894, s. 7, and an Order existed conferring powers in this behalf under s. 161, *ante*, p. 364, upon the rural authority, the Board, after communicating with the latter authority, rescinded their Order.

(*b*) This will appear from the valuation list of the union or of the contributory place.

(*c*) As to the effect of an Order which conferred lighting powers on a rural authority, see *Lancs. and Yorks. Rail. Co.* v. *Bolton Union*, *ante*, p. 366. An Order conferring urban powers under s. 150 on a rural authority simply confers on the rural authority the same powers with regard to actual streets as an urban authority would possess; the description of a road as a "street" in the Order does not make it a street if it is not one in fact (*Fenwick* v. *Croydon R. S. A.*, [1891] 2 Q. B. 216; 55 J. P. 470).

Power of rural authority to form special drainage districts.

277. It shall be lawful for a rural authority, by resolution (*a*) to be approved by the Local Government Board (*b*), but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district for the purpose of charging thereon exclusively the expenses of works of sewerage, water supply or of other works, which by this Act are or by Order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place (*c*).

Special drainage districts were formerly constituted by the sewer authority under the Sanitary Act, 1866, by virtue of the Sewage Utilisation Act, 1867, or by the Secretary of State under the last mentioned Act, or by rural sanitary authorities under the Public Health Act, 1872.

The Editors are not aware of any complete list of such districts; they are not very numerous.

As to the dissolution of special drainage districts, see s. 270 and notes thereto.

Procedure.

(*a*) Although the statute does not prescribe any previous notice or other preliminaries, no such resolution should be passed by the rural authority without due deliberation and sufficient notice, so that the ratepayers of the district to be affected by it may have an opportunity of being heard by the authority before it is passed, and if necessary, of appealing to the M. of H. That department will probably direct a local inquiry before approving a resolution.

Practice of Local Government Board (now M. of H.).

(*b*) The L. G. B. stated that, having regard to the fact that the P. H. A., 1875, contemplates that in all ordinary cases the civil parish shall in rural districts be the area upon which special expenses incurred in respect of it shall be charged, it was contrary to their practice to approve of the constitution of a special drainage district under s. 277, save in exceptional cases where the circumstances clearly pointed to the desirability of adopting such a course. In this connection the Board pointed out that when an area was formed into a special drainage district, it became a separate contributory place for all the purposes of the Act, and in view of this fact they required in such cases to be satisfied, *inter alia*, that both the area proposed to be formed into the special drainage district and the remainder of the civil parish were areas of such a nature as to be suitable for separate contributory places for the purposes of the Act.

Subject to the above conditions, the Board were prepared to consider applications for their approval to the constitution of a special drainage district in any case where it was proposed to carry out, for the sole benefit of the area comprised in the proposed district, sanitary works involving a large capital expenditure, but in such cases the Board only considered the application for their approval of the constitution of the district in connection with the application for their sanction to the raising of the loan required to defray the cost of the works. The views of the M. of H. are similar.

An application to the Ministry should be made in the following manner: The rural council should proceed to pass a resolution constituting the district in terms and

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referring to a map showing its boundaries. An ordnance map on a scale of not less than six inches to a mile should be used for this purpose, and the boundary of the proposed special drainage district should be indicated by a continuous hard line of colour, carefully drawn with a draughtsman's pen, the outside edge of the line of colour representing the precise boundary intended. The line should be drawn in such a manner as to prevent any doubt hereafter arising as to the inclusion or exclusion of any particular roads, premises, etc. A duplicate of the map should also be prepared; and each copy should be endorsed: "This is the map (or "a duplicate of the map," as the case may be) referred to in the resolution passed by the rural district council of in the county of on the day of constituting the special drainage district." This endorsement should in each case be signed by the clerk to the council, and both copies of the map should then be forwarded to the Ministry, accompanied by a copy of the resolution referred to. The Ministry should at the same time be furnished with particulars as to the area, population, and assessable value of the parish, and of the parts of the parish which would be respectively within and without the special drainage district. A statement of the grounds upon which the rural council consider the constitution of the special drainage district to be necessary or desirable should also be submitted.

Special drainage districts for waterworks purposes.

Where application has been made to the M. of H. for their approval of the constitution of special drainage districts for the purpose of charging thereon exclusively the cost of works of water supply, the Ministry have pointed out that by the exercise of the powers possessed by rural councils of charging rates and rents for the supply of water under s. 56, *ante*, p. 129, and the Public Health (Water) Act, 1878, s. 9, the council may practically throw the cost of the works of water supply on the actual consumers of the water, and that in view of this fact it would not accord with the Ministry's practice to approve the formation of such a district where the principal object in view was to limit the area to be charged with the cost of works of water supply.

Special drainage district consisting of two parishes.

It is also contrary to the usual practice of the Ministry to approve the formation of two rural parishes into a special drainage district. If it is considered necessary that parishes should be amalgamated for all purposes, the matter should be brought before the county council with a view to action being taken under the L. G. A., 1888, s. 57. See s. 229, *ante*, p. 510, and notes thereto as to the apportionment of the cost of works which are for the common benefit of two or more contributory places.

A special drainage district may, however, be set up for parts of two or more parishes, or for one whole parish and part of another.

Special drainage districts not to consist of houses only.

It is not intended that an alteration of this kind (*i.e.*, constitution of a special drainage district) should be effected with the object of making that part of a parish or township which is occupied by houses only a separate contributory place, as express provision is made by s. 230, *ante*, p. 514, for rating lands on a reduced assessment of one-fourth of the value, so that, while still forming part of the same rating area as the lands containing the nucleus of the population, they may not be subject to the full burden of the rates levied for special expenses. See also the statement quoted above as to the general policy of the Act.

Effect of constituting special drainage district upon loans.

The formation of a special drainage district including part of a parish, on mortgage of the rates of which a loan has been previously raised, has no effect in altering the incidence of the loan, which will remain chargeable upon the entire parish.

There is no statutory authority for the formation of a special drainage district to include portions of districts of separate rural authorities. Those authorities may, however, combine for the execution of works. See s. 285, *post*, p. 619, and also the L. G. A., 1894, s. 57.

Special drainage districts cannot overlap sanitary districts.

The section does not provide for an alteration of the boundaries of an existing special drainage district. It would seem, therefore, that the only method of effecting an alteration is to dissolve the district (under s. 270) and to constitute a new one.

Alteration of special drainage districts.

(*c*) That is, for all the purposes of the Act. Section 229, *ante*, p. 510, declares the meaning of a "contributory place," and sets forth what are *special expenses*.

Incidence of expenses.

As to the mode in which the expenses of a rural council in respect of a special drainage district comprising parts of more than one parish should be levied, the L. G. B. once stated that the amount required by the council should be apportioned between the portions of the drainage district in each parish according to the assessable

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value of each portion for the purposes of the special expenses rate, and that a separate precept should be addressed to each set of overseers requiring them to pay the sums thus apportioned. A separate rate would then, in pursuance of s. 230, *ante*, p. 514, be made and levied by the overseers of each parish over so much of the parish as is within the special drainage district.

Under the Scotch Act, which is differently worded, it was held that preliminary expenses incurred in connection with, but prior to, the formation of the special district, were properly charged thereon (*Inverarity* v. *Forfar C. C.* (1906), 8 F. (H. L.) 15).

A rural district council, unlike an urban council, have no power to divide their district, irrespective of parish boundaries, for *certain* purposes of the Act: see s. 211 (4), *ante*, p. 479, and note thereto.

Power to settle disputes as to boundaries of districts.

278. On the application of any urban authority (being a local board or improvement commissioners), the Local Government Board may, by Order after local inquiry, settle any dispute as to the boundaries of the district of such authority; such Order shall be published in some local newspaper circulating in the district to which it relates, and from and after its commencement shall be conclusive on the question determined by it.

This section is superseded by the L. G. A., 1888, s. 57, *post*, which enables a county council to make orders for the definition of the boundaries of county districts.

Union of Districts.

Formation of united district.

279. Where, on the application (*a*) of the local authorities of any urban or rural districts, or of any such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places (*b*) in any rural district or districts, to be formed into a united district for all or any of the purposes following; (that is to say,)

(1) The procuring a common supply of water; or

(2) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places (*bb*); or

(3) For any other purposes of this Act:

the Local Government Board may by Provisional Order (*c*) form such districts or contributory places into a united district (*d*).

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act (*e*).

(*a*) See the instructions of the M. of H. as to the mode of making applications to them under this section in App. II., *post*, Vol. II. Those relating to the formation of united districts require that the application should be made by a resolution of the local authority of *each* of the districts proposed to be formed into a united district. The resolution should specify the purposes for which the united district is to be constituted and the basis upon which the representation on the joint board and the contributions to the common fund by the constituent authorities are proposed to be settled. A copy of the resolution, certified by the clerk, should be forwarded to the Ministry, together with a copy of any agreement to combine which may have been executed.

As to the advantages of constituting a joint board instead of appointing a joint committee under s. 285, see note (*b*) to that section.

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The Ministry would probably require exceptional reasons to be shown before including a district in a combination against the wishes of the local authority.

The following are instances of the constitution of united districts for the several purposes mentioned:—For waterworks: The Conway and Colwyn Bay Joint Water Supply District. For main sewerage: The Upper Stour Valley, and the Portslade and Southwick Joint Sewerage Districts. For hospital purposes: The Biggleswade, Burnley, Croydon and Wimbledon, and Isle of Thanet Joint Hospital Districts. For cemetery purposes: The Appleby and Whitchurch (Salop) Joint Cemetery Districts.

See the Housing, Town Planning, etc. Act, 1909, s. 38, *post*, Vol. II., as to joint action by local authorities for any purpose of the Housing Acts, an order under that section having the same effect as a Provisional Order under this section.

(*b*) As to what are contributory places, see s. 229, *ante*, p. 510.

(*bb*) The functions of a joint board set up for sewerage purposes are limited to the construction and maintenance of main sewers and works of sewage disposal. The sewerage systems of the several districts remain under the charge of the local authority. See note (*c*) to s. 281.

(*c*) See s. 297, *post*, p. 629.

(*d*) See also s. 285, *post*, p. 619, which enables two or more authorities to combine of themselves for the execution of works for mutual benefit. Section 28, *ante*, p. 91, provides for agreements for mere communications of sewers. See also s. 131, *ante*, p. 238, as to joint hospitals; ss. 191 and 286, *ante*, p. 454, and *post*, p. 621, as to joint medical officers of health; and the L. G. A., 1894, s. 57, *post*, as to joint committees.

(*e*) The proportion of these costs must be settled by the respective authorities. They will relate principally to the expense of promoting the Provisional Order and securing its confirmation by Parliament. See s. 298 in this connection.

Governing body of united district.

280. The governing body of a united district shall be a joint board consisting of such ex-officio members (*a*) and of such number of elective members as the Local Government Board may by the Provisional Order forming the district determine.

A joint board shall be a body corporate by such name as may be determined by the Provisional Order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any licence in mortmain (*b*).

(*a*) The M. of H. must decide who are to be *ex-officio* members, as they are not defined or described by the Act.

(*b*) This is similar to the provision contained in s. 7, *ante*, p. 39.

Contents of Provisional Order forming united district.

281. The Provisional Order forming a united district under this Act shall define the purposes for which such united district is formed, and the powers (*a*) rights duties capacities liabilities and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to; and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts (*b*).

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease

Section 281. to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorised to exercise or perform or is made subject to (*c*); nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties (*d*).

(*a*) See notes to s. 279. Borrowing powers are granted to the joint board by s. 244, *ante*, p. 539.

(*b*) The Ministry will doubtless adopt, as far as practicable, the provisions of this Act applicable to single authorities.

(*c*) The constituent authorities only lose their powers in relation to matters strictly within the province of the joint board under the terms of the Order. Thus in the case of the formation of a united district for main sewerage purposes, the constituent authorities must provide all necessary internal sewers and works. See note (*bb*) to s. 279.

By the Public Health (Prevention and Treatment of Disease) Act, 1913, s. 1 (see notes thereto, *post*), notwithstanding this provision the M. of H. may authorise a local authority having jurisdiction in any part of a united district to exercise in relation to that part any powers which the joint board are also authorised to exercise, subject to conditions and restrictions.

(*d*) Care should be taken that the common object of combination is not lost sight of in any delegation of powers or duties under this clause. The power is rarely exercised.

Meetings and proceedings of joint boards.

282. Meetings of any joint board shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the Order forming the joint board) (*a*) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

(*a*) The Order here referred to is that made in pursuance of the last section.

Expenses of joint board.

283. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the Provisional Order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value (*a*) of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being (*b*).

The question as to the power of a joint board to pay the travelling expenses of the members in attending meetings was submitted to the L. G. B., who, whilst disclaiming jurisdiction to decide the question in the form presented, stated that they were disposed to consider that the reasonable expenses of the members so incurred might be defrayed as part of the expenses of the joint board. It would, however, in the first instance rest with the auditor to decide as to the legality and reasonableness of any charge made.

(*a*) *Rateable value* corresponding with *full net annual value* which is defined in s. 4, *ante*, p. 15, under the word *rack-rent*.

(*b*) The valuation list is made pursuant to the Union Assessment Committee Act, 1862. See Lumley's Union Assessment Committee Acts.

A Provisional Order of the L. G. B., confirmed by a local Act, provided that the expenses incurred by the joint board for the district should be defrayed out of a common fund, to be contributed by the component districts in manner provided by s. 283, *supra*, and that the contributions of certain of the component districts should be contributed and raised as if they were required to defray "special expenses" within the meaning of this Act:—*Held*, on a special case, that the joint board should

apportion the contributions of the component districts according to the rateable values of the properties in such districts, to be ascertained according to the valuation list, and that the rateable values of tithes, tithe commutation, rent-charges, land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, or covered with water, or used as a canal or towing path, or as a railway, should be taken at the full value appearing in the valuation list, and not at one-fourth thereof (*Darenth Main Valley Sewerage Board* v. *Dartford Union* (1887), 19 Q. B. D. 270).

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284. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Payment of contributions to joint board.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly (*a*), such contribution in the case of a rural authority being deemed to be general expenses (*b*).

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned (*c*) to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof (*d*).

(*a*) *I.e.*, in the county court or in the High Court, according to the amount claimed. See *Richardson* v. *Willis* (1872), L. R. 8 Ex. 69, where it was said to be a general rule that if a statute gave a right to a sum of money, and provided no means of recovering it, the remedy was by action. But, as this may be a dilatory process, the next paragraph substitutes an alternative mode of proceeding.

(*b*) As to what are general expenses, see s. 229, *ante*, p. 510. And see *Darenth Main Valley Sewerage Board* v. *Dartford Union*, *supra*.

(*c*) See s. 292, *post*, p. 625.

(*d*) See s. 229, *ante*, p. 510, as to what are contributory places, and s. 230, *ante*, p. 514, as to the recovery of amounts due from them.

285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining (*a*) district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together (*b*) for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute

Power to execute works in adjoining district, and to combine for execution of works.

Section 285. for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

(*a*) In a colonial case the word "adjacent" was contrasted with the word "adjoining," and was held to include places close to or near, and was not confined to places adjoining (*Wellington* (*Mayor of*) v. *Lower Hutt* (*Mayor of*), [1904] A. C. 773). See also as to the meaning of the word "adjoining," p. 302, *ante*.

Works which may be done outside the district without consent apparently include sewerage works under ss. 16, 32—34, *ante*, pp. 55, 94; laying of water mains under s. 54, *ante*, p. 128; drains under s. 22, *ante*, p. 81; cleansing of ditches under s. 48, *ante*, p. 117; abatement of nuisances under ss. 108, 115, *ante*, pp. 208, 217; construction of waterworks under s. 51, p. 119, *ante*.

The L. G. B. expressed the opinion that in the case of a combination of authorities under s. 285 for the execution of sewerage works of common benefit no sanction on their part was necessary under s. 28 to the communication of sewers, nor were notices under ss. 32, 54 necessary, unless the proposed work would lie outside the area of the combining authorities.

This section does not apply to the powers conferred by s. 131, *ante*, p. 238, so as to require for their exercise in an adjoining district the consent of the local authority of such district (*Withington L. B.* v. *Manchester* (*Mayor, etc. of*), [1893] 2 Ch. 19; 57 J. P. 340). "The object of s. 285 is to enable the local authority acting under it to do certain things as within their powers which, but for the section, would have been outside their powers. They can do certain things in an adjoining district without the imputation of acting *ultra vires* if they have got the consent of the local authority. But, in my opinion, that has not the effect of making the adjoining district or that portion of it their own district for all the purposes of s. 16; or, in other words, it does not dispense with the necessity, as between themselves and owners of land or other persons, of observing the requirements that have to be observed with respect to sewers where sewers are made outside the district of the board that is making them" (*per* NORTH, J., in *Jones* v. *Conway and Colwyn Bay Joint Water Supply Board*, [1893] 2 Ch. 603, at p. 609), and see note (*f*), *ante*, p. 59.

It would thus appear that the consent of the adjoining authority does not dispense with the necessity of giving notices under ss. 32 and 54 as to sewers and water mains outside the district for the sole benefit of the authority constructing them.

(*b*) As to the union of districts, see s. 279, *ante*, p. 616, and as to joint committees, s. 57 of the L. G. A., 1894.

Advantages of joint board over joint committee.

When works of magnitude are required for the joint benefit of two or more districts the M. of H. favour the constitution of a joint board under s. 279 rather than a combination under s. 285. A committee have no power of themselves to borrow money or to hold property or to sue or be sued. A joint board, however, is free from these disadvantages, and executes powers independently of the local authorities comprised within the united district. By s. 244 they are enabled to borrow money, and under s. 280 they are a body corporate with power to hold lands for the purposes for which they are constituted. They are also empowered to issue precepts to the local authorities within the united district for the sums to be contributed by such authorities towards the expenses of the joint board, and in case of default to proceed in a summary manner to raise such sums.

The independent powers which a joint board possesses for the borrowing of money is particularly important when one or more of the local authorities is nearing the limit of its borrowing powers under s. 234 (2).

Where a corporation and a district council combined under ss. 131, 285 to provide a joint hospital, it was held that the salaried clerk of the joint hospital committee held a paid office "under the district council," and was therefore disqualified for membership thereof (*Grenville-Smith* v. *Tomlin*, [1911] 2 K. B. 9; 75 J. P. 314).

Two authorities liable to repair a length of a road in strips agreed to each repair the whole width for half the length: *Held*, that one of them could not plead this agreement as a defence to an action for not performing its duty on a portion legally repairable by it, but informally transferred to the other (*Gray* v. *St. Andrews and Cupar District Committees*, [1911] S. C. 266).

286. Where it appears to the Local Government Board, on any representation made to it (*a*), that the appointment of a medical officer of health (*b*) for two or more districts situated wholly or partially in the same county (*c*) would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by Order (*d*) unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives) (*e*) which, in the opinion of the said Board, require regulation for the purposes of this section; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts:

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Districts may be united for appointing a medical officer of health.

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough) having a separate court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such district or borough (*f*).

Not less than twenty-eight days notice that it is proposed to make an Order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union, and if within twenty-one days after such notice has been given to any such authority they (*g*) give notice to the Local Government Board that they object to the proposal, the Local Government Board may include their district in the union by a Provisional Order (*h*) but not otherwise.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for the united districts as the said Board may think fit; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration to be paid by the local authority or authorities of the district or districts within which his duties under this section are performed as those authorities may (*i*), with the approval of the Local Government Board, determine (*k*).

Formerly under the L. G. A., 1888, s. 17, a county medical officer appointed by a county council might by arrangement perform the duties of medical officer of health in any urban or rural sanitary districts within the county; but no new agreements of the kind can now be made (Housing, Town Planning, etc. Act, 1909, s. 68 (3), *post*, Vol. II.).

(*a*) An example of an Order issued by the L. G. B. in pursuance of a representation under this section will be found in the South-West Gloucestershire United Districts (Medical Officer of Health) Order, 1906, which was confirmed (upon objection) by the Local Government Board's Provisional Orders Confirmation (No. 7) Act, 1906.

For the views of the L. G. B. (presumably those also of the M. of H.) as to

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combination of districts for the appointment of medical officers, reference may be made to the Board's memorandum of Dec., 1910.

(*b*) See as to the appointment of this officer s. 189, *ante*, p. 447. The M. of H. consider that, apart from any general report, it is incumbent upon the medical officer of health of a combined district to make an annual report in respect of each sanitary district included in the union.

(*c*) There are now very few districts situate in more than one administrative county: see the L. G. A., 1894, s. 36. It is not apparently competent to a port sanitary authority to join in a combination for the joint appointment of a medical officer of health.

(*d*) See s. 295, *post*, p. 627.

(*e*) This will include travelling expenses and cost of living. In some cases hotel expenses may be recognised as necessary.

(*f*) The consent of the majority of members assembled at a meeting specially convened for the purpose will doubtless suffice. It is to be observed that this consent is a condition precedent to the constitution of the district. A resolution proposed and carried will be sufficient, and a copy under the hand of the clerk of the authority will be sufficient evidence of it.

No mode is pointed out for ascertaining the population. The report on the last census will in many cases suffice.

(*g*) This applies, not to the urban district previously noticed, but to a rural district, or an urban district not within the description.

(*h*) As to this Order, see s. 297, *post*, p. 629. The confirmation of the Order by Parliament may be opposed by any party legally interested.

(*i*) See s. 191, *ante*, p. 454, as to the appointment of a district medical officer to act under this statute.

(*k*) Seeing that the local authority have a discretion as to what salary they will assign, they should settle this before the assignment of the duties is made by the M. of H., as the Ministry will not assign any duties, nor the officer accept the appointment, unless adequate remuneration is to be given.

PORT SANITARY AUTHORITY.

Constitution of port sanitary authority.

287. The Local Government Board may, by Provisional Order (*a*), permanently constitute any local authority (*b*) whose district or part of whose district forms part of or abuts on any part of a port (*c*) in England, or the waters of such port or any conservators commissioners or other persons having authority in or over such port or any part thereof, (which local authority conservators commissioners or other persons are in this Act referred to as a "riparian authority,") the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

The Local Government Board may also by Provisional Order (*a*) permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and may prescribe the mode of their joint action; or by forming a joint board consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district (*d*). Moreover the Local Government Board may by Provisional Order (*a*) permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

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In any case in which the Local Government Board are by this section authorised permanently to constitute by Provisional Order a port sanitary authority, the said Board may, if it thinks fit, until such Order has been made and confirmed by Parliament, temporarily (*e*) constitute by Order any such authority, and may from time to time renew any such last-mentioned Order, and may by any Order so made or renewed make any such provisions as it is by this section empowered to make by Provisional Order (*f*).

Any Order constituting a port sanitary authority may assign to such authority any powers rights duties capacities liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid (*g*); and where such Order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a Provisional Order forming a united district under this Act (*h*).

A port shall mean a port as established for the purposes of the laws relating to the customs of the United Kingdom (*i*).

Constitution of port sanitary authority.

(*a*) See s. 297, *post*, p. 629. The Public Health (Ships, etc.) Act, 1885, s. 3, varied the provisions of this section by allowing a port sanitary authority to be constituted by an *Order* of the L. G. B., a *Provisional Order* being required only in the event of objections being lodged to the proposal. See the section *in extenso*, *post*.

The L. G. B. stated that they were advised that a port sanitary authority to whom they had by Order under s. 287, *supra*, as amended by the Public Health (Ships, etc.) Act, 1885, applied the powers, rights, duties, capacities, liabilities, and obligations of s. 189 of the Act of 1875, was a local authority within the meaning of the L. G. A., 1888, s. 24 (2) (c), and, as such, entitled to repayment from the county fund in respect of the salaries of medical officers of health and inspectors of nuisances as provided for in the last-mentioned enactment.

As to the appointment, duties, etc., of medical officers and inspectors of nuisances in the case of port sanitary authorities, reference may be made to an Order and Circular of the L. G. B., dated Dec. 21 and 22, 1910.

The M. of H. hold the view that a port sanitary authority is not a local authority within the meaning of the Public Health and Local Government Conferences Act, 1885, and that legislation would be necessary to enable them to issue an Order applying the Act to such sanitary authorities.

(*b*) Note the general character of this term, which is defined in s. 4, *ante*, p. 7.

(*c*) See definition of "port" at the end of this section.

(*d*) See s. 279, *ante*, p. 616.

(*e*) As to the conclusiveness of this temporary Order while it is in force, see s. 295, *post*, p. 627.

(*f*) These words, providing for the renewal of the Order, did not exist in 35 & 36 Vict. c. 79, s. 20. Some doubt existed as to whether the Board possessed the power of renewal under that Act, and accordingly s. 325 of this Act, *post*, p. 656 (now repealed), was passed to ratify and confirm their renewed Orders.

Assignment of powers, etc.

(*g*) By the Public Health (Ports) Act, 1896, s. 1, *post*, the M. of H. may by Order assign to any port sanitary authority any powers, rights, duties, capacities, and obligations under the Infectious Disease Prevention Act, 1890, *post*, with the necessary modifications, and by s. 2 the Act is to be construed as one with this Act. Where such an Order is in force, the powers and duties of the local authorities in the places referred to are *pro tanto* superseded. See *Clark* v. *Rochford R. D. C.* (1897), 13 T. L. R. 371. The latest General Order on the subject is dated July 14, 1920.

By way of illustration reference may be made to the Provisional Order permanently constituting a port sanitary authority for the port of Plymouth, which will be found in Glen's Local Government Orders, at p. 258. It provides for the number and qualification of the members of the port sanitary authority, for their continuance

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in office, casual vacancies, meetings, powers of the authority, expenses, accounts, audit, and the settlement by arbitration of any disputes between the joint board and any riparian authority, or between any two or more riparian authorities respecting any matter arising out of the provisions of the Order. See also the General Order for the accounts of such authorities, Stat. R. & O., 1896, p. 451.

Powers of borrowing are given to port sanitary authorities by s. 244, *ante*, p. 539.

(*h*) See s. 279, *ante*, p. 616.

Port for customs.

(*i*) See the Customs Laws Consolidation Act, 1876, ss. 11—16. These sections provide that the Treasury may, by their warrant, appoint any port in the United Kingdom, and declare the limits thereof, and may annul the limits of any port already appointed or to be thereafter set out, and may declare the same to be no longer a port; Provided that such alterations or variations in limits shall not affect any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to her Majesty's Customs) granted to any person or body by any Act of Parliament, etc., but they shall be deemed to be and remain the same for the purposes of such Act as if no such alteration or variation had been made. The Treasury may, from time to time, revoke or alter any warrant made by them.

Jurisdiction of port sanitary authority.

288. The Order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or such portions of the district within the jurisdiction of any riparian authority as may be specified in the Order.

As to what is a *riparian authority*, see the last section.

Delegation of powers by port sanitary authority.

289. A port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the Order of the Local Government Board; but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the Order of the Local Government Board within the district of such port sanitary authority (*a*).

(*a*) This is merely an emphatic reiteration of what has been provided in the previous sections.

Expenses of port sanitary authority.

290. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just.

Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act (*a*).

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct.

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Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly (*b*), such contribution in the case of a rural authority being deemed general expenses of that authority (*c*). If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned (*d*) to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several riparian authorities are combined in the district of one port sanitary authority the Local Government Board may by Order (*e*) declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.

See now as to grants by the M. of H. the General Order of the M. of H. of July, 1920.

(*a*) As to these expenses in an urban district, see s. 207, *ante*, p. 469. In a rural district they will ordinarily be general expenses, as to which see s. 229, *ante*, p. 510.

(*b*) That is by action. See note (*a*) to s. 284, *ante*, p. 619.

(*c*) See s. 229, *ante*, p. 510.

(*d*) See s. 292, *infra*.

(*e*) See as to this Order, s. 295, *post*, p. 627.

Provision as to port of London. [Repealed by 54 & 55 Vict. c. 76.]

291. *The mayor aldermen and commons of the city of London shall be the port sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.*

This section was repealed by the P. H. (London) A., 1891, and re-enacted by s. 111 of that Act. See also s. 112. The L. G. B. issued an Order under these provisions dated March 25th, 1892.

The General Order of July 14th, 1920, referred to on p. 623, note (*g*), does not apply to the Port of London.

The limits of the Port of London were set out in a Treasury Warrant dated August 10th, 1883.

Proceedings for raising a sum for payment of debt within district of defaulting authority.

292. Where any port sanitary authority joint board or other authority are authorised, in pursuance of this Act, to proceed in a summary manner (*a*) to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority (*b*).

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers (*c*), the authority so authorised as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied

Section 292.

by the officer of the defaulting authority for the payment of the expenses of that authority (*d*); and where the defaulting authority (*e*) have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities (*d*).

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority (*b*).

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs charges and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs charges and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

(*a*) See s. 284, *ante*, p. 619, and s. 290, *ante*, p. 624.

(*b*) Refer for these powers to Part VI., *ante*, p. 469.

(*c*) This, in the case of an urban sanitary authority in default, applies where a borough rate, improvement rate, or district rate can be levied. A rural authority cannot levy a rate directly; see s. 230, *ante*, p. 514.

(*d*) See Part VI. and s. 256, *ante*, p. 564.

(*e*) This applies to the case of a rural authority, so that where the rural district council comprised in a joint district make default, the joint board may issue their precepts to the overseers of the parishes in the district.

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

Power of Board to direct inquiries.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act.

These powers in relation to the public health were assigned to the Privy Council by 21 & 22 Vict. c. 97, s. 3, and transferred to the L. G. B. by 34 & 35 Vict. c. 70. This passage, therefore, only repeated earlier provisions. It will be seen that certain inquiries are directed by the Act; as to these the M. of H. (successors of the Board) have no discretion. See ss. 33, 53, 176, 234, 272—274, and 278, *ante*, and s. 297, *post*. They have, however, a discretion as to other inquiries for the purposes of the Act. Under the Housing of the Working Classes Act, 1890, s. 85, *post*, Vol. II., for the purposes of the execution of their duties under that Act, the M. of H. may

hold such local inquiries as they see fit, and ss. 293 to 296, both inclusive, of this Act relating to inquiries by them, shall apply. See also the L. G. A., 1888, s. 87, *post*.

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The M. of H. hold that reports made to them by their inspectors in relation to such matters as the proposed borrowing of money, or applications for the issue of orders of various kinds under the Act, are intended solely for their own information, and they consequently decline to furnish copies either to local authorities or private persons. In the case of legal proceedings the Board do not refuse to nominate one of their officers, who can be served with a *subpœna duces tecum* for the production of official papers in court; but the officer is always instructed to claim that a report is privileged, and that it would be injurious to the interests of the public service to put it in evidence. Such an objection is usually upheld.

In an action to restrain the use of a small-pox hospital, as being a source of danger to health, an inspector of the L. G. B., who was subpœnaed, stated that the President of the Board had ordered him not to produce a report which he had made on the hospital, on the ground that it might be prejudicial to the public service. The inspector was not examined, but the court respectfully protested against the action of the Board (*Att.-Gen.* v. *Nottingham Corporation*, [1904] 1 Ch. 673; 68 J. P. 125).

Reports of the medical inspectors of the Board, however, giving results of the inspection of sanitary districts, and containing recommendations as to their sanitary requirements, are usually printed by the department, and communicated to the district councils concerned.

See also the provisions of s. 13 (5) of the Gas and Waterworks Facilities Act, 1870, Amendment Act, 1873, with regard to reports of commissioners appointed by the Board for the purpose of that Act.

294. The Local Government Board may make Orders (*a*) as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such Order may be made a rule of one of the superior courts (*b*) of law on the application of any person named therein.

Orders as to costs of inquiries.

(*a*) As to these Orders, see next section. The L. G. B. always interpreted this section as applying to their own costs, but the Ministry of Health recently reconsidered the matter and now announce that they consider themselves empowered to make orders under the section as to the costs of the parties appearing at a local inquiry. See also note to s. 54 of the L. G. Act, 1888. The Ministry usually recover from local authorities the personal and travelling expenses incurred by their inspectors in the investigation of applications made to them under the Act. The debt does not accrue until the date of their Order.

(*b*) That is, a division of the High Court of Justice. 1 & 2 Vict. c. 110 contained provisions for enforcing payment of costs upon rules of court, and these will be available against individuals; but with regard to costs awarded against the local authority, the effectual remedy will be by *mandamus*.

295. All Orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

Orders of Board under this Act.

Questions of some difficulty have arisen as to the effect of Orders which are alleged to exceed the powers given by this Act, or with respect to which the preliminaries prescribed by this Act have not been strictly complied with. The confirmatory Acts formerly only confirmed the Orders so far as they were authorised by the Acts. In such cases it became important to determine how far the requisite preliminaries were conditions precedent to the validity of the Order although confirmed by statute. The following cases illustrate these remarks. The General Board of Health made a Provisional Order extending the P. H. A., 1848, to T., a district within which

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were parts of turnpike roads made under local turnpike Acts. A local sanitary Act also applied to the district, which was altered by this Order, and it was directed that after confirmation of the Order by Parliament, s. 50 of the Towns Improvement Clauses Act, 1847, which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the sanitary Act. This Provisional Order was confirmed by the statute *so far as authorised by the above Act.* It was held that this part of the Provisional Order was not authorised, and consequently was void. The court considered that toll on the turnpike road was not a matter which came within the scope of the Public Health Act (*Clayton* v. *Fenwick* (1856), 20 J. P. 180; 6 El. & Bl. 114). An Order of the General Board of Health rendering the same Act applicable to the borough of T., but excepting the operation of so much of s. 88 as provided for the rating of pasture lands, railways, etc., at a reduced rate, was held to be invalid in respect of this exception (*N. E. Rail. Co.* v. *Tynemouth* (*Mayor, etc., of*) (1868), L. R. 3 Q. B. 723; 32 J. P. 822). But where an Order, confirmed by statute, repealed a local Act which created a district rate, but exempted certain property from such rate, and the clause containing the exemption was preserved by such Order, the court held that the Order had no operation with regard to rates imposed by the Public Health Act, for the rating clause of the Act having been repealed, there was nothing to which the exception could apply (*Turner* v. *Halifax* (*Mayor of*) (1868), 9 B. & S. 623 n).

In *Att.-Gen.* v. *Hanwell U. D. C.*, [1900] 1 Ch., at p. 56, in dealing with an argument that this section was conclusive as to the jurisdiction of the L. G. B. to make an Order under s. 175, directing land to be applied to purposes inconsistent with the purpose for which it was originally acquired, KEKEWICH, J., after citing this section, said: "But that does not prevent the court from considering the question of jurisdiction. It cannot be intended that an Order of the L. G. B. made without jurisdiction is to be held conclusive in a court of justice. It must be the duty of the court to inquire whether the Order could properly be made. If it could properly be made, it would be conclusive under s. 295, though there might be some irregularities about it, and though perhaps it ought not to have been made." On appeal, this part of the judgment was not questioned, and the decision on the main point was affirmed ([1900] 2 Ch. 377).

In *R.* v. *Robinson* (1851), 17 Q. B. 466, it was held that an order of the Poor Law Commissioners (whose powers are now vested in the Ministry of Health) might be quashed in part on *certiorari* if the parts were sufficiently divisible. But see s. 262, *ante*, p. 582.

See a discussion on the conclusiveness of orders of the L. G. B. made under s. 33 of the Local Government Act, 1894, and as to the right to make an amending Order (*Jones* v. *Lewis* (1918), 83 J. P. 61).

As to the force and effect of departmental orders which affect the rights of property, see *Frewin* v. *Lewis* (1837), 9 Sim. 66; *Foster* v. *Dodd* (1866), L. R. 1 Q. B. 475; (1867), L. R. 3 Q. B. 67; 32 J. P. 20. In *Att.-Gen.* v. *Manchester* (*Bishop of*) (1867), L. R. 3 Eq. 436, at p. 455; 31 J. P. 516, STUART, V.-C., quoted the following passage from the judgment of COTTENHAM, L.C., in *Frewin* v. *Lewis*, *supra*, as laying down the rule of law: "I apprehend that the limits within which the court interferes with the acts of public functionaries constituted like the Poor Law Commissioners are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by the law, this court will not interfere to see whether any alteration or regulation which they may direct is good or bad; but if they are departing from that power which the law has vested in them—if they are assuming to themselves a power over property which the law does not give them—this court no longer considers them as acting under the authority of their commission, but treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority."

For a case where an award of partition was disregarded as being made without jurisdiction notwithstanding s. 105 of the Inclosure Act, 1845, see *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.

Where a statute authorised the making of rules and orders, and declared that they should have effect as if enacted in the Act, but should be laid before Parliament, and if either House so resolved within 60 days should be annulled, it was held that a court could not consider whether Orders so made and not annulled were *ultra*

vires (*Patent Agents' Institute* v. *Lockwood*, [1894] A. C. 347); and see *Re London, etc. Bank*, [1895] W. N. 155. The decision in the Patent Agents' Institute case was distinguished in *Waterford* v. *Murphy*, [1920] 2 I. R. 165, which dealt with byelaws whose scope was limited, and it was held that the limit had been exceeded. **Note to Section 295.**

Where an Act declares that an Order made under it shall be final and have effect as if enacted in the Act, and that confirmation by the L. G. B. or M. of H. shall be conclusive evidence that the requirements of the Act have been complied with, and that the Order has been duly made and is within the powers of the Act, the courts cannot interfere if some requirement has not been complied with (*Ex parte Ringer* (1909), 73 J. P. 436; 25 T. L. R. 718; *R.* (*Eustace*) v. *Local Government Board* (1910), 44 Ir. L. T. 176, not following *R.* (*Whyte*) v. *Local Government Board* (1909), 43 Ir. L. T. 216); and see *R.* v. *L G. B. for Ireland*, [1917] 2 I. R. 454.

An Order of the L. G. B. made under s. 276, declared s. 150 of the Act to be in force as to a particular road, which road the Order purported to declare to be a "street." It was held that the matter to which it referred was, first, the application of s. 150 (among other sections) to the so-called street; and, secondly, the investing of the rural authority with the powers of an urban authority, so far as regards the so-called street, but that the mere description of the road as a street in the Order could not make it one if it was not one in fact (*Fenwick* v. *Croydon Rural Sanitary Authority*, [1891] 2 Q. B. 216; 55 J. P. 470). See also *Att.-Gen.* v. *Hanwell U. D. C.*, *ante*, p. 628.

Besides other modes of enforcing such Orders, they may be enforced under certain circumstances by *mandamus*, and perhaps by indictment. See *R.* v. *Walker* (1875), L. R. 10 Q. B. 355; 40 J. P. 230.

With regard to defaulting authorities, see s. 299, *post*, p. 632.

As to evidence of Orders see s. 135, *ante*, p. 247, and *R.* v. *Lowe*, in the note thereto.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board (*a*), have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*b*). Power of inspectors of Local Government Board.

(*a*) Note the limitation to inquiries directed by the Board (now M. of H.).

(*b*) 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors. Under these sections an inspector may summon any person to be examined before him, or to produce and verify on oath any books, contracts, agreements, accounts, or copies of the same, and not relating to or involving any question of title to land (except the property of the local authority). He may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering, or concealing any books, etc., are misdemeanors. As to false evidence given before the inspector, see the Perjury Act, 1911.

Provisional Orders by Board (*a*).

297. With respect to Provisional Orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made: As to Provisional Orders made by Local Government Board.

(1) The Local Government Board shall not make any Provisional Order under this Act unless public notice of the purport of the proposed Order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such Provisional Order relates (*b*):

(2) Before making any such Provisional Order, the Local Government Board shall consider any objections which may be made

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thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable (*c*), shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections (*d*) :

(3) The Local Government Board may (*e*) submit to Parliament for confirmation any Provisional Order made by it in pursuance of this Act, but any such Order shall be of no force whatever unless and until it is confirmed by Parliament (*f*) :

(4) If while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills (*g*) :

(5) Any Act confirming any Provisional Order made in pursuance of any of the Sanitary Acts (*h*) or of this Act, and any Order in Council (*i*) made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any Provisional Order made by the Local Government Board and confirmed by Parliament :

(6) The Local Government Board may revoke, either wholly or partially, any Provisional Order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the Order is pending in either House of Parliament :

(7) The making of a Provisional Order shall be primâ facie evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such Provisional Order have been complied with (*k*) :

(8) Every Act confirming any such provisional Order shall be deemed to be a public general Act (*l*).

Preliminary procedure.

(*a*) See also notes to ss. 176, 295 and 303.

In *In re Morley* (1875), L. R. 20 Eq. 17, the M.R., referring to a Provisional Order made by the Board of Trade, observed : " The legislature, instead of allowing proceedings to be taken before a committee of either House, decided that these inquiries " (*i.e.*, preliminary to the making of the Order) " might be prosecuted more cheaply and more beneficially before a local tribunal or persons appointed to inquire into the matters locally. These proceedings are instituted, and the parties interested, instead of applying to Parliament, apply to the Board of Trade, and after making a proper investigation in the locality, the Board of Trade makes a Provisional Order, and then if Parliament thinks fit, that Provisional Order, generally with a great many more, is confirmed by an Act which is not procured at all by the applicants, but by the Board of Trade ; that is, by the executive government of the country. The result is that there has been an entire change of system, and all that the applicant obtains is the Provisional Order, and there is no proceeding in Parliament with which he really has anything to do *directly*." Note the limitation of these last words.

The L. G. B. annually issued Circular Letters and Instructions relating to applications for Provisional Orders by local authorities, and the practice is continued by the M. of H. These should be carefully attended to. The current Circular and Instructions will be found in App. II., *post*, Vol. II.

As to the application of s. 297 under the Rivers Pollution (Border Counties) Act, 1898, see s. 2 of that Act in App. I., *post*, Vol. II. And see also s. 29 (4) of the Mental Deficiency Act, 1913.

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(*b*) This advertisement is usually combined with that announcing the local inquiry which is directed. The advertisement is framed by the Ministry, and forwarded to the local authority for publication at their own expense. Reference should be made to s. 176, *ante*, p. 417, as to the advertisements, etc., necessary before applying for a Provisional Order to authorise the compulsory purchase of land. Advertisements.

(*c*) In some cases the Act itself requires an inquiry. In others the Ministry deem it advisable for the purpose of guiding their action. It seems that under s. 176 (4), *ante*, p. 418, the inquiry may in exceptional instances be dispensed with. Inquiry.

(*d*) It is obvious that persons may also attend and be heard in support of the proposal. The Ministry frame the Order themselves.

(*e*) The Ministry can exercise their discretion as to submitting the Order to Parliament at all, and, consequently, as to when they will do so. They generally group several Orders together in one Bill in such a manner as to prevent, as far as practicable, unopposed Orders from being delayed by association with such as may be contested. They can choose in which House to bring in the Bill, and accordingly at the latter part of the session they frequently introduce it in the House of Lords. Submission to Parliament.

(*f*) Therefore the Order cannot be quashed on *certiorari* (*R.* (or *Frewin*) v. *Hastings L. B.* (1865), 29 J. P. 711; 6 B. & S. 401; *In re Local Government Board, Ex parte Kingstown Commissioners* (1886), 18 L. R. Ir. 509; *R.* v. *Enniskillen U. D. C.*, [1902] 2 I. R. 452). In the *Kingstown Commissioners Case, supra*, it was held that the L. G. B. in exercising its functions as to Provisional Orders is not a court; that purely legislative powers, or powers of promoting legislation, are not on principle, subject to prohibition; but that an usurpation of jurisdiction of a judicial character might be prohibited. The Chancery Division will by injunction restrain a local board from prosecuting an application for a Provisional Order when the application is contrary to equity, and will not drive the applicant to petition Parliament against the Bill (*Telford* v. *Metropolitan Board of Works* (1872), L. R. 13 Eq. 574; 36 J. P. 628; and *cf. Levenshulme U. D. C.* v. *Manchester Corporation* (1908), 72 J. P. 470).

(*g*) As most Provisional Orders are made for the benefit of some particular locality, and are not framed by the Ministry spontaneously, if there is opposition to an Order, its defence before the committee is left to the promoters of the proposition contained in it, notwithstanding the observations of the M. R., *ante*, p. 630; at the same time, the Ministry reserve a power of withdrawing any Order from the Bill, if this seems to them to be expedient pending its passage through Parliament. Opposition.

33 & 34 Vict. c. 1, gave power to the Select Committee of either House of Parliament, to whom Bills confirming Provisional Orders are referred, to award costs under 28 Vict. c. 27, and to examine witnesses on oath as under 21 & 22 Vict. c. 78. It was repealed, but re-enacted with a slight addition not affecting these Orders by 34 & 35 Vict. c. 3, which is still in force as to costs, but has been repealed as to the power to examine witnesses upon oath by 34 & 35 Vict. c. 83, which gives a general power to any committee to examine witnesses on oath.

The next section provides for the costs of the promoters.

(*h*) See the definition in s. 4, *ante*, p. 35. "Sanitary Acts."

(*i*) Orders in Council were made under 11 & 12 Vict. c. 63, but *quære* whether any were made under any other Act. See further as to such Orders, s. 339, *post*, p. 665. As to the exercise of the powers conferred by this sub-section, see *In re Local Government Board, supra.* Orders in Council.

(*k*) The Ministry are therefore strict in seeing that all preliminaries are in order: see particularly notes to s. 176, *ante*, p. 417. It is open to any petitioner to show before the committee that there has been some default in this respect. Whether advantage can be taken of any such defect after the passing of the Confirming Act is yet to be decided. Proof of preliminaries.

(*l*) Hence it is the practice of the Ministry to insert in the body of the Bill clauses which alter the general law in respect of the district to which any Provisional Order relates, where the Order renders some alteration necessary, or some special privilege, exemption, or requirement expedient. But such provision must arise out of the Order or be connected with it. The Board will not propose extraneous alterations of the law in a confirming Bill. Public general Act.

Though these are public general Acts, they are now printed with the local Acts in the authorised edition of the Statutes.

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Costs of Provisional Orders.

298. The reasonable costs of any local authority in respect of Provisional Orders made in pursuance of this Act, and of the inquiry preliminary thereto (*a*), as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such Provisional Orders, and such costs shall be paid accordingly (*b*); and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs (*c*).

Taxation of costs.

(*a*) Though a contrary opinion was once held by the L. G. B. this section applies even when the expenses incurred have not resulted in the issue of a Provisional Order. It does not apply to Provisional Orders under the Gas and Waterworks Facilities Acts, or the Electric Lighting Acts.

With reference to the costs of the preliminary inquiries previous to the issuing of the Provisional Order, the M.R. in *In re Morley*, *ante*, p. 630, said as to the bill of costs of the solicitor engaged by a local authority:—"These are not parliamentary costs, they are simply costs of obtaining an Order from the Board of Trade, and they must be taxed under the ordinary rules applicable to costs. There is a reason for this. In former days, when application had to be made to Parliament, great expenses were incurred in consequence of the necessity of employing parliamentary agents and so on; but on these local inquiries there is no necessity for anything of the kind; you may employ an ordinary solicitor, and the notices may be served in the ordinary way, and no great expenditure is incurred." But, by the House of Commons Costs Taxation Act, 1879, all the powers and provisions of the House of Commons Costs Taxation Act, 1847, are extended and applied to the costs, charges, and expenses of any parliamentary agent, solicitor, or other person in respect to the obtaining or promotion of or opposition to any Provisional Order or Provisional Certificate or any Bill for confirming the same; and in respect to the promotion of any Bill by any public trustees or commissioners, or by any municipal or other public authority, and in respect to the opposition to any public and general Bill.

An application to the M. of H. under this section should be accompanied by taxed bills of all law costs, vouchers for other payments, and the certificate of taxation by the taxing officer of one of the Houses of Parliament. It is unnecessary to submit the costs to the clerk of the peace. See also notes to s. 249.

The costs incurred by a rural district council in promoting or opposing a Provisional Order are not "special expenses" unless so declared by order under s. 229.

(*b*) Hence it will not be necessary for the local authority to obtain in this case the sanction required by the Borough Funds Acts, 1872 and 1903, where a Bill to confirm a Provisional Order is being promoted. Nor, prior to the passing of the Borough Funds Act, 1903, was it necessary to obtain any sanction to enable the local authority to oppose a Provisional Order Bill (see *Brooks, Jenkins & Co.* v. *Torquay Corporation*, [1902] 1 K. B. 601).

Loan for costs.

(*c*) The local authority may obtain this loan from the Public Works Loan Commissioners under s. 242, *ante*, p. 537. The Ministry usually allow only a short term for the repayment of loans of this character.

Power of Board to enforce Performance of Duty by Defaulting Local Authority.

Proceedings on complaint to Board of default of local authority.

299. Where complaint (*a*) is made to the Local Government Board that a local authority has made default in providing their district (*b*) with sufficient sewers, or in the maintenance of existing sewers (*c*), or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost (*d*), or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce (*e*), the Local Government Board, if satisfied, after due inquiry (*a*), that the

authority has been guilty of the alleged default, shall make an Order (*f*), limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the Order, such Order may be enforced by writ of mandamus (*g*), or the Local Government Board may appoint some person to perform such duty (*h*), and shall by Order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the Order, together with the costs of the proceedings, shall be paid by the authority in default; and any Order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench (*i*), and be enforced in the same manner as if the same were an order of such court (*k*). Section 299.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may from time to time by Order change any person so appointed (*h*).

(*a*) The section contains no indication of the requirement of a qualifying interest on the part of a person preferring a complaint. It may therefore be made by any person. No particular form has been prescribed, but it should be in writing, addressed to the Minister of Health (successor of the L. G. B.) under cover addressed to the Secretary, should closely follow the terms of the section, and state, with as much conciseness as practicable, the facts of the case which show the default of the authority. The complaint.

The Ministry decline to indicate in detail the nature of the evidence which should be submitted at a local inquiry to substantiate a complaint of default. See, however, the next note as to what will be required of the complainant when the complaint relates to water supply. If the complainant does not himself attend the inquiry, it is probably sufficient if some person conversant with the facts attends on his behalf, makes a statement in support of the complaint, and answers any questions the inspector may put.

See also the L. G. A., 1888, s. 19 (2), as to representations to the Ministry by county councils that a district council have failed to properly put in force the P. H. A., 1875, or that any other matter affecting the public health of a district requires to be remedied; also the L. G. A., 1894, s. 16, as to complaints by parish councils to *the county council*, of the default of rural district councils, in the matter of sewers, water supply, the enforcement of the P. H. A., or highway maintenance.

By an unrepealed provision in the Housing of the Working Classes Act, 1885 (s. 7), it is the duty of every local authority entrusted with the execution of the laws relating to public health and local government to put in force from time to time, as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within their area.

(*b*) The complaint need not relate to the district as a whole, though the Ministry cannot be expected to make an Order unless an appreciable part of the district is concerned. In the case of the city of Rochester, in which both the complaint and Order referred to "the village of Borstal," it was held by the court that the portion of the city thus described was sufficiently defined and well known, and that the Order should be enforced by *mandamus* (Times, November 22nd, 1892). Meaning of "district."

(*c*) As to the duty of a local authority to provide and maintain sewers, see s. 15 and notes thereto. It will be seen that a complaint cannot be sustained under s. 299 that a local authority have failed to provide sewers for the purpose of carrying off liquid trade refuse. Complaint as to sewers.

It will be observed that no reference is made to works of sewage disposal. Therefore, mere failure to provide proper works for the purification of sewage cannot be the subject of complaint under the section. Procedure under the Rivers Pollution Prevention Acts is appropriate in such cases.

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In cases where there is a dispute whether a sewer vests in the local authority under s. 13, the Ministry of Health will not settle this question upon a complaint of default.

A neglect to cleanse existing sewers is not a default in respect of which a complaint may be made under this section: therefore an action will lie in respect of injury occasioned thereby (*Baron* v. *Portslade U. D. C.*, [1900] 2 Q. B. 588; 64 J. P. 675).

By a Provisional Order, confirmed by Act of Parliament, a local authority were required to carry out within a fixed time works approved by the L. G. B. for the disposal of the sewage of their district, and in case of default these requirements were made enforceable in manner provided by the above section. The local authority constructed sewage works approved by the Board, and the works, though constructed without negligence, created both a public and a private nuisance. It was held that the Order was only a direction to the local authority to exercise the powers of s. 27, *ante*, p. 89, within a given time, and did not exempt them from their obligation under that section not to create a nuisance, and an injunction was granted (*Att.-Gen.* v. *Dorchester Corporation* (1906), 70 J. P. 281; 94 L. T. 682).

Where the remedy under this section is applicable, no action for damages will lie at the suit of a private person. See *Robinson* v. *Mayor, etc. of Workington*; *Pasmore* v. *Oswaldtwistle U. D. C.*; *Dent* v. *Mayor, etc. of Bournemouth*, and *Jones* v. *Barking Urban District Council*, in notes to s. 15, *ante*, p. 54; *Baron* v. *Portslade U. D. C.*; *Harrington* (*Earl of*) v. *Derby Corporation*, in notes to s. 15 at p. 55, s. 17 at p. 69, and s. 19 at p. 75. See, however, *Att.-Gen.* v. *Lewes Corporation* on p. 55, *ante*. In an action claiming damages and an injunction to restrain an authority from managing a sewage farm in such a way as to cause a nuisance to the plaintiff, the defendants contended that the action would not lie by reason of this section; but this contention was overruled (*Hewinson* v. *Cheltenham R. D. C.* (1903), Times, July 8th). And see *Bainbridge* v. *Chertsey U. D. C.*, [1915] 84 L. J. Ch. 626; 79 J. P. 134.

Complaint as to water supply.

(*d*) A complaint under the present section in regard to water supply must allege that the district council have made default in providing their district (or part thereof) with a supply of water, that danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and that a proper supply can be got at a reasonable cost. Before directing a local inquiry in such cases the Ministry require a definite assurance from complainants that they are prepared with adequate evidence to support the complaint, including proof that the use of the source or sources of supply suggested, together with all necessary rights, can be obtained by the local authority under the Act. Evidence is also required that the water obtainable from the source suggested is sufficient in quantity and of good quality, that the supply is likely to be permanent, and that the cost of providing and distributing the water would be reasonable.

In the case of a district which is within the statutory limits of a water company it would seem that the section is inoperative so long as the company are able and willing to afford a supply: see s. 52, *ante*, p. 125, and notes thereto.

See also the Public Health (Water) Act, 1878, ss. 3 *et seq.*, *post*.

Complaint as to non-enforcement of Act.

(*e*) The L. G. B. stated that they were advised that these words do not apply to duties which the local authority ought themselves to perform, but only to those which they ought to require others to perform. In the case of a complaint that a local authority had failed to take steps under the Act to secure the abatement of a nuisance, the Board stated that even if it could be contended that the section was literally applicable there were practical difficulties in taking effectual proceedings thereunder, as the powers of the section, and the action contemplated by it, were unsuitable for the purposes in view. The M. of H. have presumably adopted these views. The remedy open to persons aggrieved will be found in s. 105.

The M. of H. do not regard the section as applicable to such matters as the non-enforcement of byelaws by a local authority, the provision of privies, the making up of private streets, the levying of water rates, or the provision of hydrants. Practically, therefore, it would seem that the operation of the section is confined to cases of the default of local authorities in the matter of sewerage and water supply.

In a case under the corresponding provision (s. 100) of the P. H. (London) Act, 1891, it was *held* that failure by a sanitary authority to take proceedings under the provisions relating to offensive trades was a "default in doing their duty" which enabled the L. C. C. to institute proceedings and recover the expenses incurred from the sanitary authority (*London C. C.* v. *Bermondsey Borough Council*, [1915] 3 K. B. 305; 79 J. P. 449).

As to highways, see the Highways and Locomotives (Amendment) Act, 1878, s. 10, and the L. G. A., 1894, s. 16.

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(*f*) This order is in itself binding and conclusive: see s. 295, *ante*, p. 627. It must be directed to and served upon the defaulting authority. The obtaining of such an order does not prevent the person, who has obtained it for the purpose of putting an end to a nuisance, from proceeding by action for an injunction to restrain the continuance thereof (*Whitefield* v. *Newquay L. B.* (1882), 72 L. T. Jo., p. 349).

The Order.

It was formerly held that a refusal by the department to make an order might be considered by the court sufficient to justify their refusing a *mandamus* if a complainant applied directly for the writ (*R.* v. *Tottenham L. B.* (1893), 9 T. L. R. 414); but according to the decision of the House of Lords in *Pasmore* v. *Oswaldtwistle U. D. C.*, *ante*, p. 52, a complainant cannot go to the court at all.

(*g*) In several cases a writ of *mandamus* was obtained by the L. G. B. Upon an application for a writ, the court do not inquire whether there has been a due inquiry under this section. The court is bound to grant the writ at the request of the department, unless there has been some legal error or some omission to apply the ordinary legal procedure (*R.* v. *Staines Union and Staines L. B.* (1893), 62 L. J. Q. B. 540; 58 J. P. 182). The writ against the Staines local board was afterwards made peremptory, notwithstanding a return that the local board required time to prepare a scheme and estimate for obtaining the necessary funds (*R.* v. *Staines L. B.*, Times, February 27th, 1894). A fresh *mandamus* was asked for after the passing of the L. G. A., 1894, against the successors of the local board, and the rule was eventually made absolute (*R.* v. *Sunbury-on-Thames U. D. C.*, Times, June 4th and July 20th, 1896).

Mandamus.

Upon application of the L. G. B. a peremptory writ of *mandamus* issued to the W. corporation requiring the execution of certain sewage works. The writ being disobeyed, writs of attachment against certain members of the council were ordered to issue, but to lie in the office for a specified period, which was extended from time to time. The corporation afterwards asked that, having satisfied the L. G. B. that the sewage works were in process of execution with due diligence, the time should be still further extended. The court, being satisfied that the work was being diligently carried on, ordered the writs to remain in the office for an unspecified period, the matter to stand over generally with liberty to apply (*R.* v. *Worcester Corporation* (1905), 69 J. P. 296; 3 L. G. R. 468).

(*h*) The alternative procedure open to the Ministry of Health under the section—of appointing some person to perform the duty—is never adopted by them, and was not favoured by the L. G. B. It was once stated on behalf of the L. G. B. in proceedings in the High Court that they had found it practically impossible to perform the duty of a defaulting authority by means of some other person, and that it was not for them as the central authority to descend into the arena of local difficulties and to undertake to do for a defaulting authority that which the statute clearly required the authority to do.

(*i*) Now the King's Bench Division of the High Court of Justice.

(*k*) Under the corresponding enactment in 29 & 30 Vict. c. 90, s. 49, an order was made that "the said authority do its duty, and begin to set about the works for the purpose within one month from the date of this order, and proceed therewith until completion." After the month, the authority having done nothing, a second order was made appointing J. B. to perform the said duty of the authority as he should be directed. It was held that the two orders were justified by the section (*R.* v. *Cockerell* (1871), L. R. 6 Q. B. 252; 35 J. P. 693). It was also held that it was not necessary to provide for the expenses in the latter order.

As to the enforcing of the Order, see 1 & 2 Vict. c. 110, s. 18, and the R. S. C., Order XLII., r. 31, which enables an order against a corporation to be enforced by sequestration or attachment. See also the next section.

300. Any sum specified in an Order of the Local Government Board for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt

Further provision for recovery of expenses.

Section 300.

due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by Order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the Order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the Order, shall pay the surplus, if any, (the amount to be ascertained by the Local Government Board,) to or to the order of the defaulting authority.

This section is practically inoperative. See note (*h*) to s. 299, *ante*, p. 635.

Power of Board to borrow to defray expenses of performing duty of defaulting authority.

301. The Local Government Board may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred; and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the Local Government Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

This section is practically inoperative. See note (*h*) to s. 299, *ante*, p. 635.

Recovery of principal and interest.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority. Section 302.

"Expenses," for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the Order of the Local Government Board, or the person appointed by that Board.

This section is practically inoperative. See note (*h*) to s. 299, *ante*, p. 635.

Powers of Board in relation to Local Acts, etc.

303. The Local Government Board may, on the application of the local authority of any district (*a*), by Provisional Order (*b*), wholly or partially repeal alter (*c*) or amend any local Act, other than an Act for the conservancy of rivers (*d*), which is in force in any area comprising the whole or part of any such district (*e*), and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject-matters as this Act. Power to repeal and alter local Acts.

Any such Provisional Order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such Order included in or excluded from such district.

See also the L. G. A., 1888, s. 59, which provides that any scheme or order under that Act may extend to any altered area the provisions of any local Act.

A further power of amending local Acts may (on the application of a local authority or an order declaring any part of the Act or any section thereof to be in force in their district) be exercised by the Ministry of Health on declaring any part or section of the P. H. A., 1907, to be in force. Section 3 (1) of the Act provides that the department may declare any enactments in any local Act which appear to contain provisions similar to or inconsistent with any part or section to be no longer in force. See the Act, *post*.

(*a*) Printed instructions are annually issued by the M. of H. as to applications for Provisional Orders under this section, and a copy of the latest instruction will be found in App. II., Vol. II.

In *Monmouth* (*Mayor, etc. of*) v. *Monmouth* (*Churchwardens of*) (1878), 38 L. T. 612, LINDLEY, J., referring to this section, said: "Nothing can be clearer than that the legislature did not intend by the Public Health Act to interfere with the local Acts. It did give power to the Local Government Board to deal with them by Provisional Orders; but that was only where they did not confer powers or privileges on any persons or person for their or his pecuniary benefit." Reference may also be made to *Walsall* (*Overseers of*) v. *L. and N. W. Rail. Co.*, in notes to s. 207, *ante*, p. 470, and *N. E. Rail. Co.* v. *Tynemouth* (*Mayor, etc. of*) (1868), L. R. 3 Q. B. 723; 32 J. P. 822.

By an Order under this section, confirmed by a local Act, the emission of black smoke "from any chimney, not being the chimney of a private dwelling-house," is in certain circumstances made an offence in the borough of B. By s. 334, *post*, p. 663, nothing in this Act is to extend "to the calcining, puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively":—*Held*, that the enactment contained in the above Order was not subject to the provisions of s. 334 (*Bessemer & Co., Ltd.* v. *Gould* (1912), 76 J. P. 349; 107 L. T. 298).

Note to Section 303.

(*b*) See s. 297, *ante*, p. 629.

(*c*) As to the acquisition of lands for the purposes of a local Act, see note (*b*) to s. 176. The law officers advised that the corresponding provision in 35 & 36 Vict. c. 79, s. 33, enabled a local Act to be altered in provisions not within the purview of the sanitary Acts, if it were brought within the operation of the section at all. Several Provisional Orders have been framed accordingly, and have been confirmed by Parliament. But there is no general power conferred upon the M. of H. to alter any local Act which relates to local matters.

(*d*) This appears to signify an Act relating exclusively to the conservancy of a river, so that when an Act provides for the conservancy of a river, and also for other matters, subjects of this Act, application may be made with reference to the latter matters.

(*e*) These words extend the provision in previous Acts, which was confined to a local Act in force in a district co-extensive with the sanitary district. A local Act is now brought within the operation of this section, though it applies to a much larger or a much less area than that of the sanitary district.

Settlement of differences arising out of transfer of powers or property to local authority.

304. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any Provisional Order made thereunder, or on the application of any person (*a*) affected by such transfer, the Local Government Board may by Order (*b*) settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys ; and any provisions contained in any Order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such Order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such Order shall be provisional only until it has been confirmed by Parliament (*c*).

Any settlement or adjustment under this section may be included in any Provisional Order which gives rise to the same.

See the similar provision in the L. G. A., 1888, s. 62, *post*, p. 775, as to adjustment of property and liabilities between authorities affected by Orders under that Act. As alterations of boundary are not now made under the powers of this Act, the present section may be regarded as superseded. See notes to s. 270, *ante*, p. 608.

(*a*) The L. G. B. declined to entertain questions of disputed liabilities or disputed accounts between local authorities and contractors, considering that such disputes and questions should be settled by arbitration or in a court of law. It is to be observed that this section did not constitute the Board the sole tribunal for any of the disputes to which the section refers. In this respect it differs from the local Act in question in *Bexley L. B.* v *West Kent Sewerage Board* (1882), 9 Q. B. D. 518 ; 46 J. P. 519. In that case the sewerage board was incorporated by a local Act (38 & 39 Vict. c. clxiii), of which s. 93 enacted that if any difference should arise between the board on the one hand and any constituted authority on the other hand, or between any two or more constituted authorities, or between any constituted authority and any parish or person, respecting any assessment of a main sewer rate, or any determination of the board, or any controversy or other matter under the Act, the same should by virtue of the Act stand referred for decision to the L. G. B., whose decision thereon and with reference to the cost of the reference was to be final

and binding. A dispute having arisen between the sewerage board and the Bexley L. B. respecting a claim made by the latter for compensation for damage done to the highways, etc., of the district, the disputants, with the consent of the L. G. B., stated a case for the opinion of the Queen's Bench Division. It was held that it was not competent for them to do so, the L. G. B. being by s. 93 constituted the tribunal, whose decision on the matter was to be final and binding, and the statement of the case not being a submission to arbitration within the meaning of the Common Law Procedure Act, 1854, s. 5, which applied only to compulsory references under the Act, or to references by consent of parties where the submission was or might be made a rule of court. **Note to Section 304.**

See also notes to s. 180.

(*b*) See as to this Order s. 295, *ante*, p. 627.

(*c*) See s. 297, *ante*, p. 629, and s. 323, *post*, p. 655, for other orders of adjustment.

PART X.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

Miscellaneous.

305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose (*a*) of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (*b*), and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice (*c*) to such owner or occupier, apply to a court of summary jurisdiction (*d*) for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them. Entry on lands for purposes of Act.

If no sufficient cause is shown against the application the court may make an order accordingly (*e*), and on such order being made the local authority or any of their officers (*f*) may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency (*g*), no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

(*a*) Care must be taken not to claim an entrance for any purpose not specified here. An entrance for the purpose of examining drains and privies, as to nuisances, and as to unsound meat, etc., can be obtained under ss. 41, 102, and 119, *ante*, pp. 105, 188, 226. See also the power of entry given by the Lands Clauses Consolidation Act, 1845, s. 84, which may be incorporated herewith by Provisional Order; and the provision in the next section for the admission of owners by occupiers to execute works. Access may be obtained to water meters under s. 58, *ante*, p. 133, and to common lodging-houses under s. 85, *ante*, p. 159. Entry for the purpose of executing regulations as to epidemic disease may be obtained under s. 137, *ante*, p. 247, and to tents, vans, etc., used for human habitation under the Housing of the Working Purposes of entry.

Note to Section 305.

Classes Act, 1885, s. 9, *post*, Vol. II., entry on dairies, cowsheds, and milkshops under the Milk and Dairies (Consolidation) Act, 1915, s. 15, *post*, Vol. II.; entry for inspection of water supply in rural districts under the Public Health (Water) Act, 1878, s. 7, *post*. p. 708; entry for cleansing and disinfecting premises under the Infectious Disease (Prevention) Act, 1890, s. 17, *post*, p. 818; for examining whether chemical refuse has been turned into sewers under the P. H. A., 1890, s. 17 (2), *post*, p. 831; on places of public resort for the purpose of enforcing the law as to ingress and egress under the P. H. A., 1890, s. 36, *post*, p. 852; for searching for petroleum under the Petroleum Act, 1871, s. 13, *post*, Vol. II.; on canal boats under the Canal Boats Act, 1877, s. 5, *post*, Vol. II.; on bakehouses under the Factory and Workshop Act, 1901, s. 102, in App. I., Vol. II. See also the power of entry given by the Housing, Town Planning, etc. Act, 1909, s. 36, Vol. II., *post*.

This section does not enable an authority to obtain an order in the case of an owner's refusal to permit an entry for purposes connected with the laying of a sewer under s. 16 (*Lamacraft* v. *St. Thomas R. S. A.* (1880), 44 J. P. 441; 42 L. T. 365). See what is said hereon at p. 58, *ante*, and see also *Diss Urban Sanitary Authority* v. *Aldrich*, *infra*. In *Wheatcroft* v. *Matlock L. B.* (1885), 52 L. T. 356, DENMAN, J., thought that the section would not apply where a landowner had refused to permit an authority to enter his land for the purpose of covering in or otherwise improving a sewer under ss. 18 and 19, *ante*, p. 74. In *Robinson* v. *Sunderland Corporation*, *infra*, CHANNELL, J., expressed the opinion that the words "for the purpose of doing works which they have statutory authority to do" may be read into s. 305, but the attention of the court was not called to *Wheatcroft* v. *Matlock L. B.*, or *Lamacraft* v. *St. Thomas R. S. A.*, *supra*.

Fixing and ascertaining boundaries.

(*b*) It does not appear that the local authority have any power to fix boundaries, but the power to enter to ascertain boundaries may perhaps be exercised for the purposes of s. 272, *ante*, p. 610.

Notice.

(*c*) As to the authentication and service of this notice, see ss. 266, 267, *ante*, p. 593.

(*d*) See the definition, *ante*, p. 36.

Powers of justices on hearing of application; statement of case by them.

(*e*) With regard to "sufficient cause" it has been held, on an application by a local authority for an order under this section, in consequence of default having been made in compliance with a notice under s. 36, *ante*, p. 69, and permission to enter having been refused, that the justices have no jurisdiction to review the notice, nor to receive evidence on the part of the owner as to the sufficiency of the existing sanitary arrangements (*Robinson* v. *Mayor, etc. of Sunderland* (No. 2), [1899] 1 Q. B. 751; 63 J. P. 341). They may, however, inquire into the regularity of any necessary preliminary notices or as to compliance with any necessary condition precedent, and otherwise whether the case is a proper one in which to make an order (*ibid.*; see also *Sutcliffe* v. *Sowerby U. D. C.* (1909), 73 J. P. 385, as to what is a sufficient notice when entry is demanded for purposes of s. 36, *ante*, p. 96, and *Vines* v. *North London Collegiate School* and *Wimbledon U. D. C.* v. *Hastings*, in the notes to s. 102, *ante*, p. 189). In a case decided before the passing of the S. J. A., 1879, it was held that justices had no power to state a case on refusing to make such an order, as there was no determination of a complaint with in 20 & 21 Vict. c. 43, s. 2 (*Diss Urban Sanitary Authority* v. *Aldrich* (1877), 2 Q. B. D. 179; 41 J. P. 549). But if they make an order, and any question is raised as to its being in excess of jurisdiction, it would seem that a case might be stated under the S. J. A., 1879, s. 33. See *Robinson* v. *Sunderland Corporation*, and *Sutcliffe* v. *Sowerby U. D. C.*, *supra*, where justices made such orders, and cases stated were argued without any objection being taken. It may also be that, under s. 33, there is power to state a case if justices decide to make no order. See *Sandgate L. B.* v. *Pledge* (1885), 14 Q. B. D. 730, and *Oaten* v. *Auty* (1919), 83 J. P. 173.

Authority for officer.

(*f*) The officer should be provided with some authority from the council.

Case of emergency.

(*g*) The person who enters must determine at his peril whether the case be one of emergency. Therefore, it will be safest to give notice, unless the emergency is obvious.

Penalty on obstructing execution of Act.

306. Any person who wilfully obstructs (*a*) any member of the local authority, or any person duly employed in the execution of this

Act, or who destroys pulls down injures or defaces any board (*b*) on which any byelaw notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board (*c*) or of the local authority, be liable for every such offence to a penalty not exceeding five pounds (*d*). Section 306.

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing (*e*), require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making (*f*) of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance (*g*).

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds (*g*).

(*a*) Wilful obstruction need not amount to actual physical violence (*Borrow* v. *Howland* (1896), 60 J. P. 391; 74 L. T. 787). See also *Bastable* v. *Little*, [1907] 1 K. B. 59; 71 J. P. 52; *Betts* v. *Stevens*, [1910] 1 K. B. 1; 73 J. P. 486. In *Baker* v. *Ellison*, [1914] 2 K. B. 762, a passenger on the top of an omnibus who refused to go inside at the conductor's request on reaching a hill which it was dangerous to descend with passengers on the top, and thereby caused the omnibus to be delayed, was held properly convicted of "obstructing" the conductor. In *Swallow* v. *London C. C.* (1916), 80 J. P. 164, it was held that a refusal on the part of the person in charge of a vehicle containing coal to put the coal on the weighing machine or to assist a weights and measures officer in the weighing did not amount to "obstructing" the weighing under s. 27 (2) of the Weights and Measures Act, 1889. Obstruction.

A notice having been served by a council upon the owner of premises requiring him to abate a nusiance thereon, certain members of the council went to the premises, and, without the owner's permission, some of them entered the premises to make an inspection, the rest remaining outside. The owner thereupon locked the door, thus preventing the members who were outside from entering, and those who were inside from getting out. Upon an information charging him with having wilfully obstructed the members in the execution of this Act, it was held that the members had no power under s. 102 to enter premises except by permission of the owner, or by order of a magistrate, and that therefore they were not lawfully there, and the owner was not guilty of obstructing them in the performance of their duty (*Consett U. D. C.* v. *Crawford*, [1903] 2 K. B. 183; 67 J. P. 309).

(*b*) See the next section.

(*c*) Notices as to inquiries which the M. of H. direct to be put up are here referred to. Defacing notices.

(*d*) As to the recovery of this penalty, see s. 251, *ante*, p. 551. It is not necessary that the justices should be acting for the petty sessional division in which the matter of complaint arises. See *R.* v. *Brodhurst* (1863), 27 J. P. 580. See also note (*d*) under s. 251, *ante*, p. 558. Penalty.

The defendant is not necessarily entitled to have the case dismissed because the obstruction took place in assertion of a claim of right, nor are the justices for that reason alone justified in refusing as frivolous an application for a special case (*R.* v. *Pollard* (1866), 14 L. T. 599).

Where the P. H. A., 1890, has been adopted in any district the provisions of this section are extended to persons who destroy, pull down, injure or deface any

Note to Section 306. advertisement, placard, bill, or notice, put up by, or under the direction of, a local authority. See *ibid.*, s. 48, *post*, p. 859.

Form of order.

(*e*) See the Form E. in Sched. IV., *post*, p. 691, which recites the issue of a summons to the party complained of, and his failure to show sufficient cause against the order.

Default.

(*f*) In 18 & 19 Vict. c. 121, s. 37, *service* was substituted for *making* in 11 & 12 Vict. c 63, s. 16. It is, perhaps, to be regretted that there has been this change. The order may be made in the absence of the occupier or without his knowledge, and the time may run from an act of which he knows nothing, whereas he could not have pleaded ignorance of the service.

(*g*) See as to the recovery of this penalty, s. 251, *ante*, p. 551.

Penalty on damaging works, etc., of local authority.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act (*a*), be liable to a penalty not exceeding five pounds (*b*).

Wilful damage.

(*a*) See s. 60, *ante*, p. 135, and the last section. An offender might also be punished under the Malicious Damage Act, 1861, s. 51, and the Criminal Justice Administration Act, 1914, s. 14. The latter Act amended s. 51 of the Act of 1861, and repealed s. 52 of the same Act. The difference between the language of these sections and that of the text should be noticed. The words of s. 51 are "unlawfully *and* maliciously," and of s. 14 "wilfully *or* maliciously"; the text simply says "wilfully." In *White* v. *Feast* (1872), L. R. 7 Q. B. 353; 36 J. P. 436, BLACKBURN, J., said: "It is obvious that very many injuries may be done to property wilfully, without being malicious, by persons so poor that a civil action would be no remedy, so that it might well be desirable to protect property, and yet not desirable that the person, though poor, should be ousted of his civil rights if the act were done under a fair and reasonable supposition of right"; and see *Watkins* v. *Major* (1875), L. R. 10 C. P. 662; 39 J. P. 808; *R.* v. *French*, [1902] 1 K. B. 637; 66 J. P. 487; and *Croydon R. D. C.* v. *Cowley* (1909), 73 J. P. 205; 100 L. T. 441.

Penalty.

(*b*) See as to the recovery of this penalty, s. 251, *ante*, p. 551. And see per CHANNELL, J., in *Welsh* v. *West Ham Corporation*, [1900] 1 Q. B. at p. 329.

Compensation in case of damage by local authority.

308. Where any person sustains any damage (*a*) by reason of the exercise of any of the powers of this Act (*b*), in relation to any matter as to which he is not himself in default (*c*), full compensation shall be made to such person by the local authority exercising such powers (*d*); and any dispute as to the fact of damage or amount of compensation (*e*) shall be settled by arbitration in manner provided by this Act (*f*), or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party (*g*), be ascertained by and recovered before a court of summary jurisdiction (*h*).

The provisions of this section are now superseded to some extent by the Acquisition of Land (Assessment of Compensation) Act, 1919, *e.g.*, the laying of a sewer in private land would appear to be a compulsory acquisition of "land" because by s. 12 (2) of that Act "land" includes any interest in land and any easement or right in, to, or over land.

Damage, what included.

(*a*) In *Herring* v. *Metropolitan Board of Works*, *post*, p. 643, a point was raised as to the kind of damage which could be recovered under the corresponding section of the Metropolis Management Act. It was not necessary to decide the point but SMITH, J., expressed an opinion that the section was confined to something like actual damage to land. See, however, the criticisms on this case in *Lingke* v. *Christchurch Corporation*, *post*, p. 644. It has been held, too, in accordance with the principle of the decision in *Ricket* v. *Metropolitan Rail. Co.*, *post*, p. 643, that in order to entitle a claimant to compensation under the Lands Clauses Consolidation Act, 1845, s. 68, injury must be done to land or some interest in land, and that a mere personal injury, though connected with the enjoyment of particular land, is not

Note to Section 308.

ground for compensation (*R.* v. *Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; 33 J. P. 710; and see *Metropolitan Board of Works* v. *McCarthy* (1874), L. R. 7 H. L. 243; 38 J. P. 820). The language of the Lands Clauses Act, however, differs materially from that used in the present section; and in view of the "unsound meat" cases referred to on p. 644, *post*, it seems clear that the damage here referred to cannot be regarded as similarly limited.

The language of the text is perfectly general, and appears to include almost every kind of loss caused by the action of the authority, though it only applies to such damage as the Act is required to excuse or justify. See *Broadbent* v. *Imperial Gas Co.* (1857), 26 L. J. Ch. 276; 3 Jur. (N.S.) 221; *Southampton and Itchin Bridge Co.* v. *Southampton L. B.* (1858), 8 El. & Bl. 801; 27 L. J. Q. B. 128. "Acts which give to parties injured a right of compensation must be taken to mean that while they take away from the owners of property the right to bring actions, they provide that parties injured by the exercise of those powers shall not be damnified by being deprived of their right of action; and, correlatively, that such persons shall have no right of compensation unless the injury which they have sustained by the exercise of the powers is such as would, but for the provisions of the Acts, have been actionable": *per* COCKBURN, C.J., in *New River Co.* v. *Johnson* (1860), 29 L. J. M. C. 93; 24 J. P. 244. And it was held by the House of Lords that unless an injury occasioned by the act of a public company would have been the subject of a claim for damages before the company obtained statutory powers to do that which occasioned the injury, it could not, unless it were expressly so provided, be a subject for compensation when occasioned by something done in the exercise of those powers (*Ricket* v. *Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 31 J. P. 484). See also *Anglo-Algerian Steamship Co.* v. *Houlder Line, Ltd.*, [1908] 1 K. B. 659, for a discussion of the *ratio decidendi* in *Ricket's Case*.

This principle was further illustrated in *Hall* v. *Bristol* (*Mayor of*) (1867), L. R. 2 C. P. 322; 31 J. P. 376, an action on an award of compensation for damage caused by the making of a sewer. BLACKBURN, J., left it to the jury to say whether the making of the sewer caused the plaintiff's land to give way independently of the weight put upon it during the last twenty years, and told them that if they thought the damage would not have been caused unless the extra weight had been put upon it, they ought to find for the defendants. It was held that the direction was right, for compensation could not be claimed for any damage which would not have been actionable if the local board had not been acting under statutory authority; and see *Rhodes* v. *Airedale Drainage Commissioners* (1876), 1 C. P. D. 402. Again, in *Cessford* v. *Dover Harbour Board* (1898), Times, April 2nd, WILLS, J., said that it was settled law that to bring a case within the doctrine of compensation as distinguished from action, three things must concur: (1) the Act must be a lawful exercise of statutory powers; (2) the damage must be such as would be actionable but for the Act of Parliament; and (3) the damage must arise from the execution of the works, and not merely from the use of them after they had been constructed.

Where persons exercising statutory powers do so negligently or unreasonably, and thereby cause damage, an aggrieved person's remedy is by action, and not by a claim for compensation (see p. 646, *post*). But, *semble*, in order to defeat a claim for compensation the onus of proving negligence is on the undertakers. A public body was empowered to carry out certain works by a statute, which also provided for the payment of compensation to any person sustaining damage by reason or in consequence of the exercise of such power. The public body, in answer to a claim for compensation, pleaded that the damage was due to its contractor's negligence, and that, therefore, a claim for compensation was not the proper remedy. It was held that the onus was on the public body to prove such negligence (*St. James's and Pall Mall Electric Light Co.* v. *R.* (1904), 73 L. J. K. B. 518; 68 J. P. 288).

In *Herring* v. *Metropolitan Board of Works* (1865), 34 L. J. M. C. 224, the defendants had, for the purpose of making a sewer, erected a hoarding in a street which rendered the access to the plaintiff's premises less convenient than before, but no part of the plaintiff's premises was taken, nor did it appear that the hoarding was kept up beyond a reasonable time. It was held that the plaintiff was not entitled to compensation for the damage sustained by the erection of this hoarding, for such an obstruction might lawfully have been made by a private person, and *a fortiori* might be made by a public body in the discharge of its duties. This decision was, however,

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observed upon, if not overruled, in *Lingke* v. *Christchurch Corporation*, [1912] 3 K. B. 595; 76 J. P. 433. In that case the defendant corporation in carrying out sewerage works obstructed the access to the plaintiff's premises. It was expressly found that they had not acted negligently or unreasonably in the exercise of their powers; but it was held that the plaintiff was entitled to compensation under the present section, because the act done by the defendants was an act which if done by a private individual would have given the plaintiff a cause of action.

Where a local authority made sewers discharging into a natural stream under the powers conferred by ss. 15—17, *ante*, p. 50, and such sewers brought down quantities of sand and silt into the stream, it was assumed that they were liable to make compensation under this section (*Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291).

A local authority laid certain sewers through the claimant's land and paid compensation in respect thereof. They then proceeded to construct on neighbouring land not belonging to him a pumping station, reservoir, and outfall sewer, which, together with the sewers laid through his land, were intended to form one system of sewage works. The claimant claimed compensation for damage caused to his land by the construction of the works on the neighbouring land. It was held that as the works were not being constructed on land belonging to him, he was not entitled to compensation, although such works formed one system with and were connected with the sewers laid through his land (*Horton* v. *Colwyn Bay and Colwyn U. D. C.*, [1908] 1 K. B. 327; 72 J. P. 57). See also *R.* v. *Mountford*, [1906] 2 K. B. 814; 70 J. P. 511; and *In re L. & N. W. Rail. Co. and Reddaway* (1907), 71 J. P. 150, where PHILLIMORE, J., refused to follow the decision of BIGHAM, J., in *Horton* v. *Colwyn Bay U. D. C.*, *supra*. When, however, the last-mentioned case was in the Court of Appeal, Lord ALVERSTONE, C.J., stated that the decision of PHILLIMORE, J., was in no way inconsistent with the decision of BIGHAM, J.

It was held in *Re Bater and Birkenhead Corporation*, [1893] 2 Q. B. 77; 58 J. P. 7, that when a justice refuses to condemn as unwholesome meat seized under s. 116, *ante*, p. 218, the owner is entitled to include in the amount of full compensation recoverable by him under this section from the local authority the costs incurred through the attendance of himself and his witnesses before the justice to resist condemnation. In *In re Davies and Rhondda U. D. C.* (1899), 80 L. T. 696, it was held that the costs of successfully defending a prosecution for exposing for sale unsound meat, which meat is the subject of the claim for compensation, cannot be recovered as damages upon an arbitration under s. 308. In a later case the Court of Appeal held that where meat has been condemned and destroyed, and the owner claims compensation, the arbitrator has jurisdiction to decide whether the meat was in fact sound, and to award as part of the compensation, the expenses incurred by the claimant in successfully defending a prosecution (*Walshaw* v. *Brighouse* (*Mayor, etc. of*), [1899] 2 Q. B. 286). This decision was, however, questioned by the Court of Appeal in *Hobbs* v. *Winchester Corporation*, [1910] 2 K. B. 471; 74 J. P. 413; and see also *In re Smith and Belfast Corporation*, [1910] 2 I. R. 285. In the latter case an Irish judge held that compensation could not be recovered for general trade loss due to the publicity of the proceedings; in *Hobbs* v. *Winchester Corporation*, [1910] 2 K. B. 46; 74 J. P. 165 (reversed, see *supra*, on another point, CHANNELL, J., had held reluctantly on the authority of *Walshaw's Case*, *supra*), that such general loss was recoverable.

A court of summary jurisdiction made an order under s. 96, *ante*, p. 182, upon the owner of premises to comply with a notice served upon him by the local authority requiring him to abate a nuisance upon the premises. Quarter sessions dismissed an appeal against the order, but stated a case. The High Court ordered that the order of quarter sessions should be quashed, and instead thereof judgment entered for the owner, and that the local authority should pay to the owner the costs of the two appeals. These costs were taxed, and paid to the owner by the local authority. The expenses incurred by the owner in promoting the appeals exceeded the costs so paid to him. All the expenses incurred by the owner throughout the proceedings were reasonably and properly incurred:—*Held*, that the owner's expenses of the proceedings in the court of summary jurisdiction, and the difference between his costs taxed as between party and party and his actual expenses of the two appeals, were not damage for which he was entitled to compensation under s. 308 (*Barnett* v. *Eccles* (*Mayor, etc. of*), [1900] 2 Q. B. 423; 64 J. P. 692).

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A local board gave notice to pave and level a street under the section of the P. H. A., 1848, corresponding to s. 150, *ante*, p. 286. Upon default of the owners they did the work themselves, and in so doing altered the level of the street so as to render the access to a house difficult and dangerous. It was held that though the owner might be liable to pay his proportion of the expenses, he was entitled to compensation for the special damage he had sustained (*R.* v. *Wallasey L. B.* (1869), L. R. 4 Q. B. 351 ; 33 J. P. 677). Where the footpath of a street which was a highway and also a turnpike road was altered by a local board under an agreement with the turnpike trustees, so as to raise its level in front of the plaintiff's house and cause him damage, it was held that the street was not, by reason of its being a turnpike road, excluded by the interpretation clause from the operation of the section giving the board power to alter the street ; and that as they were exercising powers given by the Act, the plaintiff was entitled to compensation (*Nutter* v. *Accrington L. B.* (1878), 4 Q. B. D. 375 ; 43 J. P. 635 ; and see *Arnott* v. *Whitby U. D. C.*, p. 646, *post*). In *Nutter's Case*, BRAMWELL, L.J., dissented, holding that as the board had all the powers of the turnpike trustees to alter the level of the road, and as no action would lie against the trustees, the principle of *Boulton* v. *Crowther*, *post*, p. 646, was applicable, being apparently of opinion that the raising of the road was done in exercise of powers other than those created by the Act. This view was adopted in a subsequent case, where there had been a subsidence of a road in front of certain houses and the houses also had subsided, and the local board raised the road to its original level. It was held that the owners of the houses could not claim compensation, as the work was not done in "the exercise of any of the powers of the Act" within the meaning of this section. These words the court held to apply to powers created by the Act, and not to powers simply transferred by s. 144 from surveyors to the board ; and as the raising of the road was done by the board either in pursuance of their duty as surveyors of highways, or in exercise of such powers as surveyors have, the owners of the houses were not entitled to compensation (*Burgess* v. *Northwich L. B.* (1880), 6 Q. B. D. 264 ; 45 J. P. 256).

In *Ballard* v. *Leek U. D. C.* (1917), 81 J. P. 232, EVE, J., said, "The only right which the defendants have to act as highway authority, and to exercise the powers conferred by the Highway Act of 1835, is the express statutory right conferred upon them by s. 144 of the Act of 1875. It comes, therefore, to this, that they are not exercising the powers of a highway authority under the Highway Act, but under this Act."

In so far therefore as a local authority can be said to have acted as surveyors of highways, no compensation can be claimed, but damages will be recoverable if they do not use reasonable care to do no unnecessary damage (*East Fremantle Corporation* v. *Annois*, [1902] A. C. 213 ; 67 J. P. 103, and cases cited therewith on p. 646, *post*).

As to the right to compensation of a person whose property has been destroyed because of its having been exposed to infection, or has been damaged during disinfection, reference may be made to *Foster* v. *East Westmoreland R. D. C.*, in the notes to s. 120, and *Garlick* v. *Knottingley U. D. C.*, in the notes to s. 121.

A plaintiff claimed on an award of compensation. The defence was that the claim was for damage alleged to have been caused by the laying of a sewer, and that the sewer had been laid before the plaintiff's title accrued. KENNEDY, J., held that the plaintiff could not recover (*Helmore* v. *East Ham L. B.* (1893), Times, December 13th ; affirmed (1894), February 9th). It would, however, appear that on a sale of land the right to claim compensation might be assigned to the purchaser (*Dawson* v. *G. N. and City Rail. Co.*, [1905] 1 K. B. 260 ; 69 J. P. 29).

A notice to lay a sewer was given under s. 16, *ante*, p. 55, and the owner of the land claimed compensation "for the damage or injury to be sustained by the construction and execution of the works." Both parties appointed arbitrators, but after they had met, the authority withdrew their notice, the works not having been commenced, and offered to pay the owner's taxed costs up to the time of such withdrawal. The offer was refused and the arbitrators awarded £10 for damages and also costs. It was held that the arbitrators had no jurisdiction to award either damages or costs under the submission in question (*Davis* v. *Witney U. D. C.* (1899), 63 J. P. 279 ; 15 T. L. R. 275). *Semble*, however, that compensation might have been allowed for damage between the date of the notice and the abandonment if this question had been submitted (*ibid.*).

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Exercise of powers of Act.

(*b*) In illustration of the words "the exercise of any of the powers of this Act," reference may be made to the cases cited in the notes to the Public Authorities Protection Act, 1893, *post*, p. 892. A sanitary authority, on account of an epidemic of measles, ordered a board school to be closed for a fortnight, whereby the master lost his fees, amounting to 30*s.* a week. He claimed compensation under the above section; but it was held that he had no valid claim, the power to close the school being given by the Education Code, 1886, s. 98, and not by this Act (*Roberts* v. *Falmouth Urban Sanitary Authority* (1888), 52 J. P. 741).

The cases cited in the preceding note show that the damage is limited to acts done in pursuance of powers given by this Act which the provisions of this Act are necessary to justify. Where an act is done by a public body in pursuance of powers given to them by statute, no *action* lies against them at the suit of a private individual for injuries sustained by him by reason of the exercise of those powers if reasonable care be taken to do no unnecessary damage (*Boulton* v. *Crowther* (1824), 2 B. & C. 703). Therefore, it was held that no *action* would lie against a local board for damage caused by the lowering of the soil of a street under the section corresponding to s. 149, *ante*, p. 273 (*Bold* v. *Williams* (1857), 21 J. P. 84). So, too, where an authority altered a bridge and its approaches under a local Act, the purposes of which were held to be purposes of the present Act, it was decided that a plaintiff whose access to her house was interfered with could claim compensation under this section, but could not maintain an action (*Arnott* v. *Whitby U. D. C.* (1909), 73 J. P. 369; 101 L. T. 114). If, however, the damage is due to an absence of reasonable care to do no unnecessary damage in the exercise of the statutory powers, an *action* will lie (*East Fremantle Corporation* v. *Annois*, *ante*, p. 645; *Canadian Pacific Rail. Co.* v. *Roy*, [1902] A. C. 220; *Ash* v. *G. N.*, *Piccadilly and Brompton Rail. Co.* (1903), 67 J. P. 417; *Roberts* v. *Charing Cross, etc. Rail. Co.* (1903), 87 L. T. 732; *Wallace* v. *McCartan*, [1917] 1 I. R. 377). Thus, where by the construction of a sewer an ornamental pond and rivulet in the plaintiff's grounds were drained, it was held that the board constructing the sewer could not be restrained by injunction, as they had not exceeded their statutory rights. It was also held that if the injury had been caused by the unskilful or improper construction of the sewer the court would have interfered to prevent it, but as this was not the case, the rights of the plaintiffs were limited to a claim for compensation (*Stainton* v. *Woolrych* (1857), 23 Beav. 225; 26 L. J. Ch. 300). "The distinction is clearly established between damage from works authorised by statutes, where the party generally is to have compensation and the authority is a bar to an action, and damage by reason of the work being negligently done, as to which the owner's remedy by action remains": *per* CROMPTON, J., in *Brine* v. *G. W. Rail. Co.* (1862), 2 B. & S. 402, 411; 26 J. P. 516. This distinction was followed in *Clothier* v. *Webster* (1862), 6 L. T. 461, where the court held that if damage was caused by the *negligent* laying of a sewer, the owner of the property damaged might bring his action, and was not put to his claim for compensation. For a case where a local authority were held liable in respect of the negligent filling in of a trench in which a sewer had been laid, see *Cox* v. *Paddington Vestry* (1891), 64 L. T. 566, on p. 258, *ante*. See also *Jacob* v. *Southend-on-Sea* (*Mayor of*) (1902), Times, December 16th; (1903), Times, May 21st, and *London General Omnibus Co., Ltd.* v. *Tilbury Contracting and Dredging Co., Ltd.* (1907), 71 J. P. 534, where damages were recovered from contractors for negligence in constructing a sewer.

The dictum of CROMPTON, J., *supra*, was adopted by the House of Lords in *Mersey Docks* v. *Gibbs* (1866), L. R. 1 H. L. 93, 112; 30 J. P. 467. See also *Hall* v. *Batley* (*Corporation of*) (1877), 47 L. J. Q. B. 148; 42 J. P. 151; *Coe* v. *Wise* (1866), L. R. 1 Q. B. 711; 30 J. P. 484; *Raleigh Corporation* v. *Williams*, [1893] A. C. 540.

"The liability of a body created by statute is governed by the statutes which create it. The powers conferred when exercised at all must be exercised with due care. In the absence of a contrary intention, its duties and liabilities are the same as those imposed by the general law on a private person doing the same thing. But for mere nonfeasance no action lies except in regard to a duty towards the plaintiff imposed by the statute and negligently omitted" (*Gibraltar Sanitary Commissioners* v. *Orfila* (1890), 15 App. Cas. 400. And see *Loader* v. *London and India Docks Joint Committee* (1891), 56 J. P. 165; 8 T. L. R. 5).

There may be a right of action for compensation under a statute, as where the tribunal appointed by the statute to assess the compensation has ceased to exist

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(*Bentley* v. *M. S. and L. Rail. Co.*, [1891] 3 Ch. 222), but such a state of circumstances can never arise under this Act.

When the damage is caused by work, the doing of which is not authorised by the statute, the remedy is by action, and not by a claim for compensation under this section (*R.* v. *Darlington L. B.* (1865), 6 B. & S. 562 ; 29 J. P. 419). The plaintiff must, however, prove that he has been injured specially (as distinct from the public generally), directly and substantially (*Martin* v. *London C. C.* (1899), 80 L. T. 866).

An action will in some cases lie if there is a departure from the statutory provisions (*Dominion Iron Co.* v. *Burt*, [1917] A. C. 179).

When a local board interfered with a watercourse in a manner not authorised by 21 & 22 Vict. c. 98, s. 68 (3), corresponding to s. 327 (4), *post*, p. 657, it was held that they might be restrained from so doing, and that the person injured would not be left to his remedy by compensation (*Grand Junction Canal Co.* v. *Shugar* (1871), L. R. 6 Ch. 482 ; 35 J. P. 660).

The fact that a claim for compensation has been made under this section will not estop the plaintiff from obtaining relief by injunction or damages, if he is in law entitled to bring an action for such relief (*Pentney* v. *Lynn Paving Commissioners* (1865), 12 L. T. 818).

A local board assuming to act under s. 39, *ante*, p. 102, erected a public urinal, partly upon a highway, and partly upon a strip of land belonging to the plaintiff, and so near to other adjoining land of the plaintiff as to be a nuisance to her, and her tenants, and to depreciate the value of her property. It was held that the plaintiff was entitled to an injunction to restrain the board from continuing the urinal upon her land, or so near thereto as to cause injury and annoyance to her or her tenants, and that it was not a matter in respect of which her remedy was by compensation under this section (*Sellors* v. *Matlock Bath L. B.* (1885), 14 Q. B. D. 928). On the other hand, in the same case, it appeared that the plaintiff had land abutting upon the highway, on which an inn and some stabling were erected. These stood back from the highway, and in front of them was an open space forming part of the same land which had been left open to and on a level with the highway, until the defendants in exercise of their powers under s. 149, *ante*, p. 273, and for the convenience of the public, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's land and premises. It was held that the plaintiff was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct, the remedy for any injury caused by the kerbstones would be by compensation under this section.

The defendants were owners of a quay over which there was a public right of way to their docks. The G. E. Rail. Co. by their private Act were empowered to enter and did enter into an arrangement with the defendants to lay tramways connecting the docks with the railway system. The company were to keep the tramways in good working order. Under the Tramways Act, 1870, the company as promoters gave notice to the defendants of their intention to open and break up the road for the purposes of doubling the rails at a particular point. The company did break up the highway for their tramway purposes. The plaintiff was injured by being thrown from his cart through the defective condition of the roadway at the place where the works were being carried out, and brought his action for damages against the defendants as owners of the highway. The jury at the trial found that the accident was due to the negligence of the company who were in possession of the spot when the occurrence took place, and that the roadway was in a defective condition owing to a breach of duty on the part of the railway company, and gave the plaintiff substantial damages. It was contended in argument on behalf of the plaintiff that on these findings he was entitled to have the verdict entered for him, but it was held that as the company were carrying out their works not under the orders or as licensees of the defendants, but under their statutory powers, and were in sole possession of the place where the accident happened, which was entirely under their control, and as the negligence causing the accident was that of the company, and not of the defendants, the verdict ought to be entered for the defendants (*Barham* v. *Ipswich Dock Commissioners* (1885), 54 L. T. 23).

If a public body do something in the exercise of their statutory powers they are not liable in respect of annoyance, not amounting to nuisance, of a temporary character in the execution of the work (*Harrison* v. *Southwark and Vauxhall Water*

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Co., [1891] 2 Ch. 409). *Cf. Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; 68 J. P. 286; *Knight* v. *Isle of Wight Electric Light and Power Co., Ltd.* (1904), 73 L. J. Ch. 299; 68 J. P. 266; *Clark* v. *Lloyds Bank* (1910), 74 J. P. 429.

The diversion by a local authority of sewage from one sewer into another already surcharged with sewage, whereby damage is occasioned to an occupier of premises, is the commission of a legal wrong in respect of which the occupier can maintain an action for damages (*Dent* v. *Bournemouth Corporation* (1897), 66 L. J. Q. B. 395). See also *Hawthorn Corporation* v. *Kannuluik*, noticed with the last-mentioned case at p. 584, *ante*.

See generally for instances of actions against local authorities the cases cited on pp. 584 *et seq.*, *ante*.

Absence of default.

(*c*) These words were new in 1875. Where meat belonging to a plaintiff was seized and condemned under ss. 116, 117, *ante*, pp. 218, 220, and it was found that some of it was in fact unsound, though the plaintiff was unaware of such unsoundness, and could not have discovered it by any reasonable examination, it was held that he was nevertheless "in default," and therefore not entitled to compensation (*Hobbs* v. *Winchester Corporation*, [1910] 2 K. B. 471; 74 J. P. 413). Apparently, too, the words would apply to cases where, owing to the default of an owner of a house or land, the authority are compelled to interfere with his property. But where work was done in excess of that required by a notice under a section in a local Act (corresponding to s. 36 of this Act), it was *held* that the owner was not "in default" so as to preclude him from obtaining compensation under the section corresponding to s. 308 (*Place* v. *Rawtenstall Corporation* (1916), 80 J. P. 433; 14 L. G. R. 901).

Where a private Act provided that all houses for slaughtering horses within a certain distance of a workhouse should be deemed public nuisances and removed, provided, however, that if they existed before the Act the owners were to be entitled to compensation, it was held that a defendant might be indicted at common law if his house was so conducted as to be a public nuisance apart from the Act, and that in such case he would not be entitled to any compensation (*R.* v. *Watts* (1826), 2 C. & P. 486).

Full compensation.

(*d*) As to "full" compensation, see *Barnett* v. *Eccles* (*Mayor, etc. of*) on p. 644, *ante*, and the cases arising out of the seizure of meat on p. 221, *ante*.

In ascertaining the proper amount of damage in respect of the making of a sewer, an arbitrator is entitled to take into consideration future as well as present damage, such as the impossibility of building over it. But *quære* whether he may take into consideration the possible defective construction of it, and the annoyance likely to arise from the opening of manholes and from stenches caused thereby (*Uttley* v. *Todmorden L. B.* (1874), 44 L. J. C. P. 19; 39 J. P. 56).

Prospective damage, as well as actual injury, must be taken into consideration: *per* BRETT, L.J., in *Re Dudley*, p. 649, *post*; and see *Colac* v. *Summerfield*, [1893] A. C. 187; *Re Brewer and Hankin's Contract* (1899), 80 L. T. 127.

Where a corporation were under a local Act empowered to make a conduit for water through a field at some distance below the surface, it was held that it was not necessary for them to make compensation for damage by severance of minerals when they were not required by the Waterworks Clauses Act, 1847, to purchase them (*In re Huddersfield Corporation and Jacomb* (1874), L. R. 10 Ch. 92). See with reference to the purchase of minerals the Public Health (Support of Sewers) Act, 1883, *post*, p. 717.

A local authority constructed a sewer under a public footpath, the soil of which belonged to the plaintiff, and made a shaft thirty feet deep into the sewer, with an entrance or manhole upon the footpath at a point where there was a junction of two sewers. It was held that they were justified in so doing, a manhole being part of the sewer, and that the plaintiff's remedy was compensation under this section (*Swanston* v. *Twickenham L. B.* (1879), 11 Ch. D. 838; 43 J. P. 380). Followed and applied in *Metropolitan Water Board* v. *L. B. & S. C. Rail. Co.*, [1914] 3 K. B. 787; 79 J. P. 337.

It seems from the judgment of JESSEL, M.R., in *Taylor* v. *Oldham* (*Corporation of*) (1876), 4 Ch. D. 395, that if a local authority lay a sewer in a private street, their so doing amounts to a compulsory taking of that part of the subsoil occupied by the sewer, and that they are bound to compensate the owner of the soil; but see *Leith Magistrates* v. *Field*, *post*, p. 649. It would appear from a recent decision that the owner of the subsoil of a highway under which a sewer is laid is entitled to compensation for damage done to the subsoil (*Northam Bridge and Roads* (*Proprietors of*)

v. *South Stoneham R. D. C.* (1907), 71 J. P. 345). It follows from the remarks of JESSEL, M.R., in *Roderick* v. *Aston L. B.* (1877), 5 Ch. D. 328, 333 (and see *Jary* v. *Barnsley Corporation*, [1907] 2 Ch. 600; 71 J. P. 468), that this section would warrant a claim for compensation for lateral support to a sewer. In a subsequent case it was held that the Act imposed upon landowners, through whose land a sewer was laid, an obligation to preserve to such sewer subjacent support, and gave them a right to immediate compensation for being deprived of free power to work subjacent mines, but not for the risk of percolation of sewage into the subjacent mines, as such percolation could only be caused by wrongful working of the mine (*Re Dudley (Corporation of)* (1881), 8 Q. B. D. 86; 46 J. P. 340). These decisions as to support have, however, been to some extent affected by the Public Health (Support of Sewers) Act, 1883, *post*, p. 717. The Gasworks Clauses Act, 1847, gives a gas company incorporated under it a right of support for their pipes, and a correlative right of compensation to the landowner for the burden thus cast upon him and for the limitation thus put upon the uses of his land: see *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629; 49 L. T. 798; *Benfieldside L. B.* v. *Consett Iron Co.* (1877), 3 Ex. D. 54; 47 L. J. Ex. 491; *L. & N. W. Rail. Co.* v. *Evans*, [1893] 1 Ch. 16. **Note to Section 308.**

By a Scotch Act (25 & 26 Vict. c. 101, s. 186), commissioners were empowered to cause to be made under the streets, public or private, such main and other sewers as should be necessary, and if needful, to carry such sewers through and across all underground cellars and vaults under any such streets, doing as little damage as might be, and making full compensation for any damage done; and if, for completing any of the aforesaid works, it should be found necessary to carry them into or through any enclosed or other lands, to carry the same into or through such lands accordingly, making full compensation. The owner of two private streets lodged a statutory claim of £1,250 for (1) ground permanently taken for sewage and drainage works; (2) surface and underground damage, loss, and inconvenience; (3) right of way for the sewers and other works, including right of access. It was held (1) that the commissioners were not liable in compensation for damage done by merely carrying sewers under a private street, or for way-leave; (2) that under the above claim an issue of damage to certain small parts of the line of streets alleged not to have been converted into private streets or dedicated to the public could not be tried (*Leith Magistrates* v. *Field* (1878), 6 Ct. of Sess. Cas. (4th ser.) 185).

With reference to the principles of valuing land for compensation, see *Mordue* v. *Durham* (*Dean and Chapter of*) (1873), L. R. 8 C. P. 336; and in regard to mines, *In re Corporation of Huddersfield and Jacomb*, *ante*, p. 648, and *G. W. Rail. Co.* v. *Smith* (1876), 2 Ch. D. 235; 40 J. P. 469.

It would seem that the local authority are not bound to make or tender compensation *before* doing an act which will have the effect of causing damage. See *Lister* v. *Lobley* (1837), 6 L. J. K. B. 200; 7 A. & E. 124; *Att.-Gen.* v. *Parish*, on p. 326, *ante*.

Quære whether there is any limitation of the time within which a claim must be made under this section: see *Pettiward* v. *Metropolitan Board of Works* (1865), 19 C. B. (N.S.) 489; 34 L. J. C. P. 301; *Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283. The limitation in s. 264, *ante*, p. 583 (now replaced by the Public Authorities Protection Act, 1893, *post*, p. 890), has been held not to apply: see *Delany* v. *Metropolitan Board of Works* in the notes to that Act, *post*, p. 899, and *Glasgow Corporation* v. *Smithfield, etc. Meat Co.*, [1912] S. C. 364.

Semble an award once made must be sued on within six years from its date (*Turner* v. *Midland Rail. Co.*, *supra*).

(*e*) Under the P. H. A., 1848, it was generally accepted that an arbitrator had no jurisdiction if there was any dispute as to liability outstanding. A local board made a sewer through the land of B., who claimed compensation. The board maintained that the land was not damaged, and consequently that B. was not entitled to any compensation. B. called upon them to appoint an arbitrator under the section of the P. H. A., 1848, corresponding with s. 180, *ante*, p. 426. The board refused to do so. B. appointed an arbitrator, who ultimately made an award *ex parte*. On motion to set aside this award, it was held that as admittedly the local board had made the sewer and were liable to make compensation if there was any damage, the dispute was one as to the "amount" of compensation alone, and therefore cognisable by an arbitrator, though he might assess the damage at nothing (*Bradby* v. *Southampton L. B.* (1855), 4 El. & Bl. 1014; 19 J. P. 644). It was assumed by the court that had there been a question of liability, the proceedings Jurisdiction of arbitrator.

Note to Section 308.

by arbitration would not have been valid. In *Bradford L. B.* v. *Hopwood* (1858), 6 W. R. 818, WOOD, V.-C., refused to restrain a claimant from proceeding by arbitration, the motion for the injunction being founded on the allegation that there was a dispute as to liability, and not merely as to the amount of compensation; but in a subsequent case the ground of the decision was that an arbitrator would have had no jurisdiction to make an award if the liability, as distinguished from the amount of the compensation, was in dispute (*R.* v. *Burslem L. B.* (1859), 28 L. J. Q. B. 345; 24 J. P. 563). These cases were discussed in *Brierley Hill L. B.* v. *Pearsall* (1884), 9 App. Cas. 595; 49 J. P. 84, which, if it does not overrule them, at least decides that they are not to be taken as applicable to the construction of this section. The court there decided that a person who claims compensation for damage, sustained by reason of the exercise of the powers of the Act, is entitled under s. 308 to have the amount of compensation determined by arbitration in the manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of the question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the question of amount. If, therefore, the authority dispute liability, they ought to refuse to fulfil the award and leave the claimant to sue on it: see *Re Walker and Beckenham L. B.* (1884), 48 J. P. 264; 50 L. T. 207.

As to the right to interest upon a sum awarded if not paid upon a formal demand being made, see *Fletcher* v. *Birkenhead Corporation*, [1907] 1 K. B. 205; 71 J. P. 111.

Where an award of compensation was proved satisfactorily by extraneous evidence to include a sum in respect of an item of loss not legally the subject of compensation the award was remitted (*In re Smith* and *Belfast Corporation*, [1910] 2 I. R. 285).

Arbitration.

(*f*) See s. 179, *ante*, p. 425. But in cases where that Act applies, see now the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

Option for summary process.

(*g*) This statement of the option is new. It is not quite clear how it is to be determined. The authority do not seek to recover any amount, and if the claimant decline to go before the justices, it is difficult to see how he can be compelled to do so; but, if he select that court, the authority must follow. This option will not be open in any case which comes within the above-mentioned Act of 1919.

Court of summary jurisdiction.

(*h*) See s. 251, *ante*, p. 551. The justices may add to the compensation the costs of the application to them (*Huddersfield* (*Corporation of*) v. *Shaw* (1890), 54 J. P. 724).

Compensation in certain cases to officers.

309. If any officer of any trustees commissioners or other body of persons entrusted with the execution of any local Act, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts (*a*), or any officer of any sanitary authority under the Sanitary Acts (*b*) by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any Provisional Order made in pursuance of either of those Acts (*c*), removed from his office, or deprived of the whole or part of the emoluments (*d*) of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may (*e*) by order award to such officer such compensation as the said Board may think just (*f*); and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.

Local Government Acts.

This section is now superseded, see the L. G. A., 1888, s. 120; and the L. G. A., 1894, s. 81 (7), and notes thereto.

Sanitary Acts.

(*a*) See the definition in Schedule V., Part 1, *post*, p. 698.

(*b*) See the definition in s. 4, *ante*, p. 35.

Provisional Orders.

(*c*) See s. 303, *ante*, p. 637.

(*d*) As to what are "emoluments," and who is an "officer" within the meaning of the section, see the cases collected under s. 81 (7) of the L. G. A., 1894, *post*.

Note to Section 309.

(*e*) But *semble* the section "entitled" the officer to compensation (*R.* v. *Local Government Board* (1874), L. R. 9 Q. B. 148; 38 J. P. 165).

Emoluments.

(*f*) Prior to 1909 it was usual for the Board in fixing compensation to follow the Treasury "practice"—as to which see notes to the L. G. A., 1894, s. 81 (7), *post*. After 1909 the practice varied.

Awards of compensation.

Most of the officers appointed under this Act hold office at the discretion of the local authority, nevertheless the Board considered them, as a general rule, officers entitled to compensation for a reasonable term. See *R.* v. *Norwich* (1838), 8 A. & E. 633; *R.* v. *Poor Law Board* (1871), L. R. 6 Q. B. 785.

Whether an order under this section can be questioned is doubted, regard being had to s. 295, *ante*, p. 627.

310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners (*a*), or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights duties capacities liabilities obligations and property exercisable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament (*b*), within or for the benefit of such district or part of a district, shall pass to and be exercisable by and vested in the council of such borough (*c*).

Provision where Improvement Act district or local government district becomes a borough.

The transfer by virtue of the Public Health Act, 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exercisable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament (*d*).

(*a*) See the definition in s. 4, *ante*, p. 4.

Improvement commissioners.

(*b*) It is doubtful whether these words carry powers other than sanitary powers possessed by these Commissioners. In the case of a new borough the "scheme" under the Municipal Corporations Act, 1882, will probably make provision in similar terms.

Other powers.

As regards the extension of boroughs by the inclusion of urban areas the Act or the Provisional Order will deal with the matter. See hereon ss. 54 and 59 of the L. G. A., 1888, *post*, pp. 768 and 773.

(*c*) The words "council of such borough" mean the mayor, aldermen and burgesses acting by the council. The effect of the section, therefore, is that, when the district is incorporated as a borough, all the property of the board (now the urban district council) (including property acquired by them by purchase after the passing of the Act) vests at once in the corporation without the necessity of any conveyance or transfer. In such a case the Bank of England are bound, on the request of the corporation, to register in their corporate name government stock previously standing in the books of the bank in the name of the district council without requiring any transfer to be executed (*Hyde* (*Corporation of*) v. *Bank of England* (1882), 21 Ch. D. 176). See also *Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716; 68 J. P. 584; and *cf. Morton* v. *Bank of England*, [1904] 1 Ch. 664; 68 J. P. 268; *Re Wallsend Corporation and Northumberland County Council*, [1906] 2 Ch. 506; 70 J. P. 434; *Re Leeds Institute of Science and Leeds City Council*, [1909] 1 Ch. 500; 73 J. P. 201.

Council of borough.

Vesting of property.

(*d*) This is a provision which was omitted in 35 & 36 Vict. c. 79, s. 7. See 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V., Part III., *post*, p. 699.

Burial board powers.

Section 311. Power of local boards to change name.

311. Any local board constituted either before or after the passing of this Act, may, with the sanction of the Local Government Board, change their name. Every such change of name shall be published in such manner as the Local Government Board may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name.

See as to the name of the local board, s. 7, and notes thereto, *ante*, p. 39.

The present section is superseded by the L. G. A., 1894, s. 55, by which any district council may, with the sanction of the county council, change their name and the name of their district.

As to election of certain improvement commissioners, etc. [Repealed by 56 & 57 Vict. c. 73, s. 89.]

312. *The retirement and mode of election of members of any authority invested by any local Act with powers of town government and rating, whose retirement and mode of election were at the time of the passing of this Act regulated by the Local Government Acts, shall be regulated in all respects by the rules for election of local boards contained in Schedule II. to this Act; but this enactment shall not affect the qualification fixed for members of such authority by the local Act under which such authority are constituted, or the qualification and tenure of office of any ex-officio members of such authority.*

This section is now repealed by the L. G. A., 1894, s. 89, *post*.

Substitution in other Acts of provisions of this Act for provisions of repealed Acts.

313. Where in any Act, or Order made by one of Her Majesty's Principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts (*a*) which are repealed by this Act are mentioned or referred to, such Act Order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act Order or document expressed in relation to the repealed provisions therein mentioned or referred to.

(*a*) See the definition in s. 4, *ante*, p. 35, and s. 323, *post*, p. 655.

The question was raised whether by virtue of an Order of the L. G. B. prior to 1875, which invested a rural sanitary authority with urban powers under the Local Government Act, 1858, with reference to such a matter as byelaws, a rural district council possessed the *additional* powers given by this Act in relation to the same kind of byelaws. The answer was in the affirmative.

Byelaws as to hop-pickers.

314. Any local authority may, if they think fit, make byelaws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority.

This section is extended to fruit-pickers by 45 & 46 Vict. c. 23, *post*, p. 717.

Note to Section 314.

See s. 182, *ante*, p. 439, as to the making of byelaws, and s. 251, *ante*, p. 551, as to enforcing them.

Byelaws upon this subject will be made chiefly, if not entirely, by rural authorities. Model byelaws are issued by the M. of H.

As to byelaws inconsistent with this Act.

315. Any byelaw made by any sanitary authority under the Sanitary Acts (*a*) which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed (*b*).

(*a*) See definition in s. 4, *ante*, p. 35.

(*b*) See s. 326, *post*, p. 656, as to byelaws made by sanitary authorities before the passing of this Act.

This section doubtless applies to byelaws made under local Acts which incorporate any of the sanitary Acts as well as to those made under these Acts.

As to construction of incorporated Acts.

316. In the construction of the provisions of any Act incorporated with this Act the term (*a*) "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any Order (*b*) confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act (*c*).

(*a*) These terms are found in such incorporated Acts as the Lands Clauses Act, the Waterworks Clauses Act, the Markets and Fairs Clauses Act, etc. All the incorporated statutes will be found in App. I., *post*, Vol. II.

(*b*) It would have been more correct to say any Act confirming an Order.

(*c*) See ss. 251—254, *ante*, pp. 551—562.

This provision creates some difficulty. It will be remembered that s. 253, *ante*, p. 559, provides that no proceedings are to be taken to recover penalties except by a party aggrieved, by the local authority, or by a person having the consent of the Attorney-General. In some cases arising under incorporated Acts the police are authorised by such Acts to arrest offenders and take them before justices. See, for example, the Town Police Clauses Act, 1847, s. 28, and *Jobson* v. *Henderson*, *ante*, p. 395.

Construction of Schedules.

317. The Schedules to this Act shall be read and have effect as part of this Act.

The forms contained in Schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

As to the construction and effect of Schedules to an Act see *Att.-Gen.* v. *Lamplough* (1878), 3 Ex. D. 214; 42 J. P. 356; *Dean* v. *Green* (1882), 8 P. D. 79; *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733; 39 J. P. 776.

The forms in Schedule IV. need not be followed precisely, but they indicate what the forms used by a local authority shall contain (*Stourbridge U. D. C.* v. *Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3); and see also *R.* v. *Baines* (1840), 12 A. & E. 210; *Bartlett* v. *Gibbs* (1843), 5 M. & G. 81; *Rayner* v. *Stepney Corporation*, [1911] 2 Ch. 312; 75 J. P. 468.

Certain orders made by a court of summary jurisdiction for the abatement of a nuisance under s. 96 were signed and sealed by one only of the justices who were

Note to Section 317.

present. Form C. in Sched. 4 purports to be under the hands and seals of two justices. It was held that the orders were bad, notwithstanding that the general forms prescribed by the S. J. Rules, 1886 showed a place for the signature of one justice only (*Wing* v. *Epsom U. D. C.*, [1904] 1 K. B. 798; 68 J. P. 259). But *quære* whether this decision now applies in view of the new S. J. Rules made under s. 40 of the Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58), and see as to the power of the court to amend on appeal or *certiorari*, *R.* v. *Tabrum* (1907), 71 J. P. 325; 97 L. T. 551.

In Ireland it has been held that a majority of the court should authenticate an order (*R.* v. *Londonderry JJ.*, [1910] 2 I. R. 458).

Temporary Provisions.

As to clerk and treasurer of certain authorities [Repealed by 46 & 47 Vict. c. 39.]

318. *Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section twelve of the Public Health Act,* 1872.

This section has been repealed by the S. L. R. A., 1883.

As to special district rates.

319. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act.

Special district rates were authorised by the P. H. A., 1848, s. 86, but the making of them for the future was prohibited by 21 & 22 Vict. c. 98, s. 54. As, however, charges upon them had in some cases been created under the former Act, such charges had still to be provided for by the levying of such rates. The 24 & 25 Vict. c. 61, s. 12, enabled the special district rate to be levied as part of the general district rate when the areas of the two rates were the same; and s. 13 provided for the payment of such rates when made for a part of the district only out of the general district rate with the consent of the creditors and of the owners and ratepayers by means of a fresh loan. These charges are, however, extinguished in all or in nearly all cases.

Division of expenses between landlord and tenant in certain cases.

320. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act, 1872, divided between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application either of landlord or tenant, by Order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act.

This section can hardly be applicable to many cases at this date.

Validity of certain securities.

321. Where by any sanction to a loan given or by any Provisional Order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

See the definition of Sanitary Acts in s. 4, *ante*, p. 35. It does not appear that any court of law had decided that when a statute required a loan to be liquidated

within a certain time, it was not lawful to make it repayable within a shorter period. But opinions having been given by counsel of repute to that effect, this section was apparently framed to meet the point. **Note to Section 321.**

322. *Where by any local Act powers are conferred on any turnpike trustees for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained.* As to certain turnpike trustees.

This section might perhaps originally have been appropriately appended to s. 6, *ante*, p. 37. It dealt with a very special and unusual case, which was provided for by 37 & 38 Vict. c. 89, s. 3, and the transfer took effect under that Act. It is now repealed by the S. L. R. A., 1898.

323. Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for the purposes of main sewerage only (*a*), or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act, 1867 (*b*), the Local Government Board may by Provisional Order (*c*) dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such Order (*d*); and until an Order has been made by the Local Government Board under this section, the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed: Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts (*e*) which are in force within the district of any such authority at the time of the passing of this Act and are repealed by this Act shall be deemed to be substituted for those enactments (*f*). As to main sewerage districts and joint sewerage boards. 11 & 12 Vict. c. 63.

Any Order (*g*) made under this section may if necessary provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

(*a*) In the P. H. A., 1848, s. 10, reference was made to a district formed for the purposes of main sewerage. No other statutory provision was made for such a district, and it does not appear how the district was to be formed, constituted, regulated, or provided with funds. The General Board of Health did, however, form one or two such districts, and their existence was recognised in 37 & 38 Vict. c. 89, s. 57. Main sewerage districts.

(*b*) The Act referred to is 30 & 31 Vict. c. 113, ss. 10–14. It is now repealed, but the provisions of it relating to the formation of joint sewerage boards are practically re-enacted in ss. 279–284, *ante*, pp. 616—619. Joint sewerage districts.

(*c*) See s. 297, *ante*, p. 629, as to Provisional Orders.

(*d*) United districts are now formed under s. 279, *ante*, p. 616; under that section, however, the M. of H. must be applied to before they can constitute the united district while under this section they can act *ex mero motu*. United districts.

Note to Section 323.

(*e*) See the definition in s. 4, *ante*, p. 35.

(*f*) See further s. 313, *ante*, p. 652.

(*g*) See s. 275, *ante*, p. 611, and s. 304, *ante*, p. 638. This Order is not provisional, but according to s. 295, *ante*, p. 627, is final and conclusive.

Effect of order.

As to audit of certain accounts. [Repealed by 46 & 47 Vict. c. 39.]

324. *The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed, not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act.*

As to certain orders under s. 20 of 35 & 36 Vict. c. 79. [Repealed by 46 & 47 Vict. c. 39.]

325. *The power conferred by section twenty of "The Public Health Act,* 1872," *of temporarily constituting a port sanitary authority shall be deemed to have authorised a renewal from time to time of any Order made under that section.*

This and the preceding section were repealed by the S. L. R. A., 1883.

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

Saving Clauses.

Provision as to the sanitary authorities existing at the passing of this Act, and their officers, etc.

326. All urban sanitary authorities and rural sanitary authorities existing (*a*) at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act (*b*); and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts (*c*), and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts under this Act; and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) (*d*) for such time as they would respectively have held office if this Act had not been passed; and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions, as to duties remuneration and otherwise, as they would have held them if this Act had not been passed (*e*); and all byelaws duly made under any of the Sanitary Acts (*c*) by this Act repealed and not inconsistent with any of the provisions of this Act shall be deemed to be byelaws under this Act (*f*); and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts (*c*) by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts (*c*) or any of them, before the passing of this Act, and existing at the time of the passing of this Act (*g*).

(*a*) They are assumed to be legally constituted, but the section does not in itself confer legality on the acting bodies.

(*b*) Consequently they would be able to execute all the powers and be subject to all the duties provided by the Act; but the last part of the section enacts the proposition in terms. **Note to Section 326.**

(*c*) See the definition in s. 4, *ante*, p. 35.

(*d*) These provisions were contained in Sched. II., Part 1, now repealed by the L. G. A., 1894, *post*, as obsolete.

(*e*) See also s. 318, *ante*, p. 654.

(*f*) See ss. 182, *ante*, p. 432, and 251, *ante*, p. 551, and *James* v. *Wyvill*, *ante*, p. 358. In *Watson* v. *Winch*, [1916] 1 K. B. 688, it was held that the byelaws there in question were abrogated by reason of the Act under which they were made having been repealed without a saving clause for the byelaws.

(*g*) See s. 343, *post*, p. 668. In *Reay* v. *Mayor, etc. of Gateshead* (1886), 50 J. P. 805, 821; 55 L. T. 92, *ante*, p. 358, DENMAN, J., said: "The intention of the legislature cannot have been as strong as to make that valid which was invalid by an Act which was the very Act in force at the time the byelaw was made. I do not think that is the effect of the Act of 1875 (in the text). All it means to do, as it seems to me, is to enact that if there be a byelaw which is valid at the time it is made under a former Act, and that byelaw is not inconsistent with the provisions of the later Act, then, in that case, it shall be deemed to be a good byelaw, and it shall not be necessary to make it over again. But it seems to me it would be going too far to hold that a byelaw is duly made under the new Act, when it was not properly made under the old Act and without jurisdiction, and to say that it is validated and made good merely by the passing of the subsequent Act, under which if it were made it would be a good byelaw."

327. Nothing in this Act (*a*) shall be construed to authorise any local authority— Saving for works and property of certain authorities, and for navigation and water rights, etc.

(1) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown (*b*), or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (*c*); or,

(2) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in her Majesty's Principal Secretary of State for the War Department for the time being; or,

(3) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof (*d*), in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or,

(4) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed,

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have been entitled by law to prevent or be relieved against such interference (*e*); or,

(5) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or,

(6) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing (*f*) in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent (*g*). And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

Effect of section.

(*a*) The effect of this and the following sections is apparently to prohibit the local authority from acting, without the necessary consent, in the matters prohibited, even although they may be prepared to pay compensation under s. 308, *ante*, p. 642. In the case of schemes submitted to the M. of H., which involve interference with any of the rights mentioned in this section or in s. 332, the Ministry invariably require evidence of the requisite consents before proceeding with the application. See also notes to s. 332, *post*, p. 662.

Sewers under commissioners.

(*b*) It is the duty of the Crown to protect the realm from the inroads of the sea by maintaining the natural barriers, or by raising artificial barriers; and therefore no subject is entitled to destroy a natural barrier against the sea. And if the destruction of such natural barrier would cause an injury to a neighbouring landowner, he is entitled by injunction to restrain it (*Att.-Gen.* v. *Tomline* (1880), 14 Ch. D. 58; 44 J. P. 617, followed and applied in *Holien* v. *Tipping*, [1915] 1 I. R. 210, and *Canvey Island Commissioners* v. *Preedy*, [1922] 1 Ch. 179; 86 J. P. 21). See, however, as to this so-called "duty" of the Crown or of the nation, the Report (1906) of the Commission upon "Coast Erosion." The Sewers Act, 1833, s. 10, which declares that certain walls, banks, and other defences by the coasts of the sea and navigable and tidal rivers are within and subject to the jurisdiction of commissioners of sewers does not of itself vest such defences in the commissioners, and in order to show that they are so vested it must be shown that the commissioners have, in fact, exercised jurisdiction over them (*West Norfolk Farmers' Manure Co.* v. *Archdale* (1886), 16 Q. B. D. 754; 50 J. P. 500; and see *Stracey* v. *Nelson* (1844), 12 M. & W. 535; *Nesbitt* v. *Mablethorpe U. D. C.* (1918), 82 J. P. 161).

Irrigation sewers.

(*c*) It will be remembered that by s. 13, *ante*, p. 45, such sewers do not vest in the local authority as other sewers do. In *L. & N. W. Rail. Co.* v. *Runcorn R. D. C.*, [1898] 1 Ch. 34, 561; 62 J. P. 9, 643, the defendants were restrained from connecting their sewers with a land drain belonging to the railway company.

The protection afforded by this sub-section applies where works are proposed to be done by an urban authority under powers conferred by the Highway Act, 1835, because the powers of that Act are only exercisable by an urban authority because

of the statutory right conferred by s. 144 of this Act (*Ballard* v. *Leek U. D. C.* (1917), 81 J. P. 232).

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(*d*) An urban council resolved to construct a system of surface water drains to discharge into the Thames by an outfall drain, carried into, through, and under the towing path, the soil of which was vested in the Thames Conservators, who are "entitled by virtue of an Act of Parliament to navigate on or use such rivers, or to receive tolls or dues in respect of the navigation thereon or use thereof." It appeared from a special case stated in an action against the council that the execution of the works would temporarily interfere with the traffic upon the towing path, but that it was the intention of the council to so carry out the works as not at any time to interrupt the traffic over more than one-half of the path, and to avoid, as far as possible, any interference with the towing of vessels. It was held upon such statement that the execution of the works would interfere with the towing path so as to interrupt the traffic thereof within the meaning of s. 327 (3), and that, therefore, the council had no right to carry the outfall drain into, through, or under the towing path, without first obtaining permission and submitting to such restrictions and conditions as the conservators thought proper to impose (*Thames Conservators* v. *Walton-upon-Thames U. D. C.* (1907), 71 J. P. 202; 96 L. T. 555).

Navigable rivers and sea-shore.

There is no exception of public navigable rivers or the sea-shore. The local authority cannot disturb any private interest therein, but even if they avoid all such disturbance they may still be prevented from doing any act which will interfere with the rights of the Crown. The Board of Trade or the Admiralty must be consulted with reference to the sea-shore and harbours.

It must be noted that the text does not refer to pollution, but to interference with navigation. Reference should be made to s. 17, *ante*, p. 60, and the notes thereon, as to the pollution of streams by sewage. See also the Rivers Pollution Prevention Acts, 1876 and 1893, in App. I., *post*, Vol. II.

In *R.* v. *Bradford Navigation* (1865), 34 L. J. Q. B. 191; 29 J. P. 613, the Queen's Bench laid down the principle, that statutory powers, though framed for the public benefit, are only co-extensive with the power to exercise them without any infringement of the general law. Where the exercise is not compulsory on the grantees, and new and unforeseen circumstances subsequently arise which render the exercise of them a nuisance, such exercise of them is unlawful. Hence, when a navigation company were empowered by statute to take water from certain streams for the supply of their canal, and the streams became polluted so that the water of the canal caused a public nuisance, it was held that the lessees of the company were properly convicted on indictment. This decision was supported by WOOD, V.-C., who granted an injunction against the company and their lessees to restrain them from drawing the polluted water from the streams into the canal, though he granted some time to enable the defendants to provide a remedy if possible (*Att.-Gen.* v. *Bradford Canal Co.* (1866), L. R. 2 Eq. 71).

(*e*) The words *injuriously affect* may possibly include pollution as well as diminution in quantity.

Injurious affection.

An authority cannot, under cover of legislative powers, make a sewer which will have the effect of polluting the water of a canal:—*Held*, therefore, that a local board must be restrained from permitting sewage communication to be made between houses and their sewer so long as it should discharge into a canal:—*Held*, also, that power given to the canal company by their Act to supply the canal with water from all brooks, streams, and watercourses within 1,000 yards did not so far comprise rain and other surface water which, being collected on the road, ran along an open gutter into the canal, as to preclude the local board from allowing it to fall through gratings into their sewer (*M. S. & L. Rail. Co.* v. *Worksop L. B.* (1857), 26 L. J. Ch. 345; 23 Beav. 198).

A watercourse, though artificial, may have been originally made under such circumstances, and so used, as to give to "riparian" owners all the rights that they would have had if it had been a natural stream. See cases in notes to s. 51, p. 123, *ante*.

Any violation of the provisions in this section will be restrained by injunction, and the party injured will not be restricted to his claim for compensation (*Grand Junction Canal Co.* v. *Shugar*, *ante*, p. 73).

A local board made certain sewers, and in so doing injuriously affected a stream

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without the consent of T., the occupier of a mill upon it. It was held that the corresponding provisions of 21 & 22 Vict. c. 98, s. 73, were not confined to cases in which a court of equity would grant an injunction against the local board, and that T. was in the position of a person who would, if the Act had not been passed, have been entitled by law to prevent the injuriously affecting of the stream. It was also held that the works not being authorised by s. 73, the claim of T. was not the subject of compensation, but ground of action (*R.* v. *Darlington L. B., ante*, p. 647).

The words of the concluding part of this clause reserve to the local authority power to challenge the right claimed by the parties referred to, and dispute that right independently of any justification under the Act.

Necessary consents.

(*f*) Although written consent is here required, it has been sought to stay summary applications in Chancery for injunctions against the works of local authorities by averments of *laches*, it being argued that such *laches* was equivalent to consent. This defence was not successful in *Att.-Gen.* v. *Luton Local Board* (1856), 2 Jur. (N.S.) 180, where there had been much negotiation and correspondence before the commencement of the suit. See, however, the judgment of WOOD, V.-C., in *Att.-Gen.* v. *Bradford Canal Co., ante*, p. 659.

It is to be observed that 21 & 22 Vict. c. 98, s. 68, prohibited the doing of the works adverted to without consent in writing *first obtained*; and this prevented the operation of the law laid down in *Stainton* v. *Woolrych* (1857), 26 L. J. Ch. 300; 23 Beav. 225, that works planned by public boards under statutes may be executed though they tend to the injury of neighbouring landowners, and consequently may be executed even without notice to them, though they may be entitled to compensation. Though the words *first obtained* are here omitted, it is presumed that the effect will be the same.

The consent in the text if given will not operate to protect the local authority from the consequences of their committing a public nuisance by their action.

(*g*) The consent of the directors or other board of management is doubtless referred to, as it would be quite impracticable to refer to the shareholders or general proprietors for their consent, unless by the constitution of the company some means be given for summoning and collecting the body into one meeting.

Reference to arbitration in case of works not within preceding section.

328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid (*a*), interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice (*b*) specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration (*c*); (that is to say,)

(1) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid:

(2) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money (*d*).

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(*a*) It is not easy to say what are the matters or things referred to, for the previous section appears to prohibit almost all acts without consent; but it is contemplated that there may be some acts which do not come within the prohibition, and then this section provides for dealing with them.

It will be seen that the section refers to companies or persons authorised to act by some Act of Parliament, but such Act need not be a private or local statute.

(*b*) See ss. 266, 267, *ante*, p. 593, as to authentication and service of notices.

(*c*) See s. 179, *ante*, p. 425.

(*d*) Note the object of this inquiry, namely *full* compensation. That may be obtained by a money payment, or it may be that such payment will not be adequate; it may be necessary that some work should be executed, and the arbitrator is to determine this question.

This section does not contemplate that the arbitrator shall ascertain the amount of compensation for the injury, if any be experienced, but the next section does.

Effect of arbitration.

329. The result of any such arbitration shall be final, and the local authority shall do as follows (*a*); (that is to say,)

(1) If the arbitrators (*b*) are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation (*c*); and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:

(3) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given (*d*).

(*a*) This section and the preceding section are expressed with some little inaccuracy. First, it is stated in s. 328 that two questions are to be submitted to the arbitrators, and then in this section it is shown that another question may be submitted to and decided by them. Again, this section states that the authority shall *do as follows*, and having required the arbitrators in a certain event to do a particular act, it empowers the authority to proceed; then afterwards, upon a decision of the arbitrators to a certain effect, it prohibits the authority from acting.

(*b*) It is presumed that the word *arbitrators* includes umpires. See s. 180 (7) *ante*, p. 426.

(*c*) It would have been better to provide for compensation after the works have been completed and the amount of the damage actually ascertained, inasmuch as the estimate of the arbitrators may prove too high or too low; it is clear, however, that the payment is here made a condition precedent to the execution of the works.

(*d*) This will not prevent the local authority from negotiating with the party referred to for the execution of such works as will remove the objection which cannot be fully compensated with money.

Provision as to transfer of powers, etc.

330. No transfer of powers and privileges under this Act (*a*) shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

(*a*) See ss. 10, 270, 275, and 310, *ante*.

Section 331.
Provision as to alteration of sewers.

331. Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock harbour or basin, may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual, and certified as such by the surveyor to the local authority (*a*), take up, divert, or alter the level of any sewers drains culverts or pipes constructed (*b*) by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration.

(*a*) Though the certificate of the surveyor is required, it does not appear that it will conclude the local authority if they can show that the new sewers or pipes are not equally effectual as the old ones; and s. 333, *post*, p. 663, accordingly provides for the reference of such question to arbitration.

According to the language of the section, no consent is required from the local authority previous to the commencement of the works. The certificate of the surveyor is to be given after the works have been done. Nevertheless, if it should appear that the parties referred to are working in such a manner as obviously to be unprotected by this Act, an injunction would probably be granted.

(*b*) Presumably these works of the local authority must have been executed with the consent of the parties referred to. It will be prudent, when such a consent is given, to reserve power to make alterations as above contemplated.

Saving for water rights generally.

332. Nothing in this Act shall be construed to authorise any local authority to injuriously affect (*a*) any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law (*b*) to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain (*c*) the consent in writing of the body of persons or person so entitled as aforesaid.

See for the general law as to interference with water rights, the notes to ss. 17, 51, pp. 60, 119, *ante*; see also s. 327, *ante*, p. 657, and notes thereto.

(*a*) In the report of the Select Committee of the House of Commons on the Public Health Act (1875) Amendment Bill (1878), R. No. 134, p. xiv., it is stated that "several Provisional Orders have been obtained under the belief that the compulsorily taking of water rights by Provisional Order was legal under the meaning assigned to the word 'lands,' the word 'lands' being defined to include 'messuages, buildings, lands, easements, and hereditaments of any tenure'"; and it was thought that under the definition a local authority could purchase water rights compulsorily under s. 176 of the Act of 1875. But a committee of the House of Lords, when considering a Provisional Order for the purchase of water rights under that section by the local board of the Westhoughton district, decided that the order was *ultra vires*, and therefore it was not confirmed. The law officers of the Crown were then consulted, and they advised: "We are of opinion that in issuing a Provisional Order under s. 176, the Local Government Board cannot confer upon a local authority power to purchase for the purposes of the Act and otherwise than by agreement any right to abstract water from any stream." See also evidence of the Secretary of the L. G. B. (Sir S. B. Provis) before the Royal Commission on Market Rights and Tolls, vol. 2, question 50, and the admission in argument in *Roberts* v. *Gwyrfai R. D. C.*, *infra*, and *cf. O'Callaghan* v. *Balrothery U. D. C.*, [1907] 1 I. R. 494. It

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follows from this that no Provisional Order which proposes to take water rights otherwise than by agreement can be made under this Act. A local authority could still obtain compulsory powers by a private Bill if prepared to bear the expense. By s. 14 of the Housing, Town Planning, etc. Act, 1919, *post*, Vol. II., power is given to acquire water rights in connection with housing schemes.

It may be pointed out, however, that although the law is as stated above there is nothing to prevent a local authority from applying to the Ministry of Health for a Provisional Order under s. 176 for the compulsory purchase of lands with the necessary consequence that they will acquire with those lands any water rights arising thereon. These powers will sometimes be sufficient for the object in view.

By altering the flow of water in a stream, although it is not diminished but only regulated, a local authority "injuriously affects" the rights of riparian proprietors, and will be restrained from doing so, although there is no proof of sensible damage (*Roberts* v. *Gwyrfai R. D. C.*, [1899] 2 Ch. 608; 64 J. P. 52).

(*b*) See the notes on s. 327, *ante*, p. 657. See also *Ripon* (*Earl of*) v. *Hobart* (1834), 3 L. J. Ch. 145; 3 My. & K. 169, for the principle upon which the court proceeds in interposing by injunction in cases of apprehended mischief or nuisance. For a case in which damage resulted from interference with the natural course of a stream, see *Greenock Corporation* v. *Caledonian Rail Co.*, [1917] A. C. 556; 81 J. P. 269. For cases as to intercepting percolating water which otherwise would have fed streams, see notes to s. 17, p. 73, *ante*.

If a local authority injuriously affects the rights of any company or individual in respect of matters to which this section applies, without the requisite consent, the remedy is not by compensation, but by action for injunction or damages (*R.* v. *Darlington L. B.*, *ante*, p. 647).

(*c*) Note these words and compare the language of s. 327, *ante*, p. 657. It is not easy to understand how any public company can properly give their consent to the authority injuring their reservoirs or streams of water. They may indeed sell the interest of the company in the same for adequate compensation, but the section appears to go further, and enables consent to be given without sale. When properly considered, however, it will be seen that it only operates to protect the local authority, and leaves the directors or managers to settle with their constituents whether they shall or shall not give their consent to the proceedings proposed.

Arbitration as to alteration of sewers injuriously affecting supply of water, etc.

333. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid (*a*), whether any sewers drains culverts or pipes substituted under the powers of this Act (*b*) for sewers drains culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this Part of this Act provided (*c*). The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers canals docks harbours and basins (*d*).

(*a*) Reference is here made to s. 331, *ante*, p. 662.

(*b*) This is under the powers in s. 331, *ante*, p. 662.

(*c*) See s. 328, *ante*, p. 660. The exact meaning of the words "at the option," etc., is not obvious, as no alternative is stated; the meaning appears to be that the complainant may sue, or if he chooses can compel a reference.

(*d*) See s. 329, *ante*, p. 661.

Saving for mines, etc.

334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient

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In *Re Dudley (Corporation of)* (1881), 8 Q. B. D. 86, 96 ; 46 J. P. 340, LINDLEY, L.J., said, referring to this section : " It is put that that section authorises the uncontrolled working of mines, and no doubt the first part of the section logically goes that length, and even further, for logically it prohibits the taking of mines by purchase ; but when the second part of the section is considered, it is clear that the whole section applies to nuisances only." BRETT, L.J., took the same view.

It was held that the corresponding provisions of 18 & 19 Vict. c. 121, s. 44, prevented the application of that Act to manufacturers of the produce of ores and minerals, so that justices had no power to order the abatement of a smoke nuisance arising from a bichrome manufactory (*Norris* v. *Barnes* (1872), L. R. 7 Q. B. 537). But that Act excepted " the manufacturing of the produce of such ores and minerals," while the text does not. Further, the text excludes the operation of the Act only if its enforcement would interfere with the working of the mine. Therefore s. 91, which provides for smoke nuisances, was held to apply to the chimney of a coal mine, unless it could be shown that smoke from it could not be prevented without interfering with the efficient working of the mine (*Patterson* v. *Chamber Colliery Co.* (1892), 56 J. P. 200 ; 8 T. L. R. 278).

By an Order of the L. G. B. made under s. 303, *ante*, p. 637, and confirmed by Parliament, the emission of black smoke from any chimney not being the chimney of a private dwelling-house was made an offence in the borough of B. :—*Held*, on appeal from a conviction thereunder, that this section did not apply (*Bessemer & Co., Ltd.* v. *Gould* (1912), 76 J. P. 349 ; 107 L. T. 298).

This section does not relieve the owners of mines, etc. from liability for a public nuisance in a suit brought by the Attorney-General for its abatement, nor from their ordinary common law liability to a person whose property is affected by it (*Att.-Gen.* v. *Logan*, [1891] 2 Q. B. 100 ; 55 J. P. 615).

With reference to the right to work mines or minerals under sanitary works, see now the Public Health (Support of Sewers) Act, 1883, *post*, p. 717.

Saving for collegiate bodies and Government departments.

335. Any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867 ; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867 (*a*), shall apply in substitution for the last-mentioned provisions.

(*a*) These Acts are 28 & 29 Vict. c. 75, and 30 & 31 Vict. c. 113. See also 35 & 36 Vict. c. 79, s. 56.

Saving for Metropolitan Board of Works.

336. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis), executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

The Metropolitan Board of Works was by virtue of the L. G. A., 1888, s. 40 (8), superseded by the London County Council.

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Saving for payment in certain cases to local authority.

337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act, 1858, Amendment Act, 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district (*a*): Provided that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

(*a*) 24 & 25 Vict. c. 61, s. 8 (repealed by s. 343, *post*, p. 668), was in the following terms: "Where already or hereafter any premises *not* being *within the limits* of the local board have a drain communicating, directly or indirectly, with a sewer *within the district*, and maintained by the local board, and any sewage flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or failing agreement between them, as on the application of the local board is determined by two justices; and the yearly sum so agreed on or determined, shall be *private improvement expenses*, and shall be charged on the premises, and be paid and recoverable accordingly as if the premises were within the district"; then follows a proviso as in the text above. It will be remembered that ss. 22 and 28, *ante*, pp. 81, 91, provide for a similar payment in future.

Saving for acts of authorities under certain local Acts. [Repealed by 46 & 47 Vict. c. 39.]

338. *All rates orders acts or things made assessed performed or done, before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act, 1872, or of this Act.*

This section was repealed by the S. L. R. A., 1883.

Saving for certain local boards.

339. Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any Provisional Order made under the Public Health Act, 1848 (*a*), and confirmed by Parliament, or the qualification or number of members of any such board; but any such Order in Council, or Order so confirmed, or the Act confirming any such last-mentioned Order, may be repealed altered or amended in manner provided by this Act (*b*).

(*a*) That is, 11 & 12 Vict. c. 63. A similar restriction as to qualification was contained in s. 312, *ante*, p. 652, in reference to boards under local Acts.

(*b*) See s. 297 (5), *ante*, p. 630.

Saving for proceedings under local Acts.

340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted (*a*) at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

(1) That no person shall be punished for the same offence both under a local Act and this Act; and

(2) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance

Section 340.

of any duty or obligation to which they may be subject under this Act (*b*).

(*a*) That is, actions may be brought or informations laid under either Act, or under both. This section meets the decision in the case of *Parry* v. *Croydon Commercial Gas and Coke Co.* (1862), 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568.

It is sometimes of considerable importance to determine whether a local authority are acting under this Act, or under a local Act: see *Burton* v. *Salford* (*Corporation of*), *ante*, p. 266. This section shows that the Act was not intended to repeal previous local Acts (*Monmouth* (*Mayor of*) v. *Monmouth* (*Overseers, etc. of*) (1878), 38 L. T 612, 617).

Whether this clause provides for any proceedings other than actions or informations is doubtful. If the local Act is superseded by the transference of its powers to the urban authority, it is difficult to see how any such proceedings under the local Act can take place, except, indeed, where actions for penalties are open to common informers. In such cases it is to be remarked that whereas under this Act the consent of the Attorney-General may be necessary, this preliminary will probably not be required by the local Act.

(*b*) The effect of this second qualification was considered in *Ashton-under-Lyne* (*Mayor, etc. of*) v. *Pugh*, [1898] 1 Q. B. 45; 61 J. P. 788. It only means that the existence of the special provisions of the local Act is not to afford an excuse to the authority for neglecting any duty imposed upon them by this Act. Thus, where a local Act of 1849 gave power to a municipal corporation to order that any street, whether a public highway or not, should be sufficiently sewered, levelled, paved, and otherwise completed by the frontagers, and provided that if they made default, the corporation might cause the work to be executed, and recover the expenses from them, it was held that s. 149, *ante*, had not the effect of repealing the provisions of the local Act as regards streets which were highways repairable by the inhabitants at large. This case was followed in *Lodge* v. *Mayor, etc. of Huddersfield*, [1898] 1 Q. B. 847; 62 J. P. 387 (affirmed on the facts, [1898] 1 Q. B. 859; 62 J. P. 515), where, with regard to similar provisions in a local Act, it was held that although the borough had become a county borough, the L. G. A., 1888, s. 11, had not the effect of repealing the provisions of the local Act as regards streets which were main roads.

Powers of Act to be cumulative.

341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

But if proceedings can be taken *under both*, how is the proviso to be met? One Act may impose a penalty for a nuisance; the other may impose a penalty and provide for abatement, or may provide for abatement only. If proceedings be instituted under both, one penalty only is to be recovered, but the penalty may be recovered under one, and abatement enforced under the other.

It will be seen that penalties are imposed by the Gasworks Clauses Act, 1847, in App. I., *post*, Vol. II., for offences committed under that Act identical with those committed under this Act.

In *Blake* v. *Mayor, etc. of Croydon* (1886), 2 T. L. R. 336, the court held that by virtue of this section the power given to the clerk of the peace to tax bills under s. 249, *ante*, p. 549, did not prevent an order to tax by a Master of the High Court.

The effect of this Act, in making improvement commissioners under local Acts urban sanitary authorities, was to reconstitute them as new bodies under the Act, vesting in them as such new bodies the powers given by the local Acts as well as

those given by this Act. "The newly created body is to exercise not only the functions that were exercised by that body before, in the same way as before, but also it is to exercise all the powers given by this Act besides": *per* WILLS, J., in *Lea* v. *Facey* (1886), 17 Q. B. D. 139; 50 J. P. 295. See also *Douglass* v. *Rhyl U. D. C.*, [1913] 2 Ch. 407; 77 J. P. 373. **Note to Section 341.**

Upon the corresponding section (s. 138) of the Public Health (London) Act, 1891, it was held that with that section in the Act, no other part of the Act could oust the jurisdiction of the High Court to grant an injunction at the suit of the Attorney-General to enforce the performance by an owner of land of his common law duty to prevent it from being so used as to be a public nuisance (*Att.-Gen.* v. *Tod Heatley*, [1897] 1 Ch. 560).

Oxford (a).

Constitution of local board of the Oxford district.

342. The local government district of Oxford shall be subject to the jurisdiction of a local board consisting of the vice-chancellor of the university of Oxford and the mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the university of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly within the jurisdiction of the commissioners for amending certain mile-ways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof and the adjoining parish of St. Clement, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

After the passing of this Act (*b*), a district formed out of the rural sanitary districts of the city of Oxford, and the Abingdon union, to be termed the "Grandpont district," shall be defined by an Order of the Local Government Board, and on a day to be mentioned in such Order, the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the members for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk; and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

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The fifteen members to be elected by the university shall be elected as follows: namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls; any member of the university, being of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor in Medicine, or any superior degree of the university, shall be qualified to be elected; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time, and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now or may hereafter be chosen by them respectively, save that in the election of members the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote.

Except as above provided, nothing in this Act shall affect the provisions of any Order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

(*a*) By a Provisional Order made under the Local Government Act, 1888, and confirmed by 52 & 53 Vict. c. xv., the city of Oxford was extended and made a county borough, and all powers, duties, etc. of the local board were transferred to the corporation as urban sanitary authority, the local board being abolished.

See also the further Acts 53 & 54 Vict. c. ccxxiii., and 59 & 60 Vict. c. cv., confirming subsequent Provisional Orders relating to Oxford.

And see the special provisions as to Oxford contained in ss. 6, 67, and 228, *ante*.

(*b*) These words were repealed by the S. L. R. A. (No. 2), 1893.

Repeal of Acts.

Repeal of Acts in Schedule V.

343. *The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualification; (that is to say,)*

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect (*a*)—

(a) *Anything duly done or suffered under any enactment hereby repealed* (*b*); *or*

(b) *Any right or liability* (*c*) *acquired accrued or incurred under any enactment hereby repealed; or*

(c) *Any security given under any enactment hereby repealed; or*

(d) *Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or*

(e) *Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid; and any such investigation legal proceeding and remedy may be carried on as if this Act had not been passed.*

The italicised words were repealed by the S. L. R. A. (No. 2), 1893. Note to Section 343.

(*a*) See s. 326, *ante*, p. 656. And see the similar provision in the Interpretation Act, 1889.

(*b*) The P. H. A., 1848, s. 72, required certain notices to be given to the local board before laying out, making, or building upon any new street. This provision was repealed by 21 & 22 Vict. c. 98, except (s. 9) as to "proceedings, matters, and things respectively begun or made" under any section of the former Act:—*Held*, that where the proper notices had been given and plans lodged, this was a matter or thing *begun or made* within the last-mentioned section, although little or nothing appeared to have been done towards the formation of the streets of which notice had been given (*Felken* v. *Berridge* (1863), 15 C. B. (N.S.) 257; 27 J. P. 776). The same view was taken in regard to similar clauses in byelaws in *Withington U. D. C.* v. *Moore* (1896), 60 J. P. 408, by HALL, V.-C., in the Lancaster Palatine Court. See, however, *White* v. *Sunderland Corporation* and *Harrogate Corporation* v. *Dickinson*, cited at p. 351, *ante*.

A notice was given by a local board of intention to make a rate under the sanitary Acts, and the estimate was deposited, but before the notice expired this Act was passed. The local board, not being aware of the repeal, made a rate purporting to be made under the repealed Act. It was held that the notice was a thing done within this proviso, and that the reference to the repealed Act was immaterial (*R.* v. *West Riding JJ.* (1876), 1 Q. B. D. 220; 40 J. P. 820).

(*c*) Where justices had made an order to abate a smoke nuisance, and prohibited its continuance under 18 & 19 Vict. c. 121, before the passing of this Act, it was held that the defendant thereby incurred a *liability* which was continued by this section, so as to be subject to a penalty for allowing the smoke to continue after the passing of this Act (*Barnes* v. *Eddleston* (1876), 1 Ex. D. 102; 40 J. P. 663).

But where under the repealed enactment a liability has been incurred for penalties, proceedings to recover such penalties cannot be brought after the time limited by the S. J. A., 1848, s. 11, in cases to which that enactment applies (*R.* v. *Cluer* (1897), 67 L. J. Q. B. 36; 77 L. T. 439).

SCHEDULES.

SCHEDULE I.

RULES AS TO MEETINGS AND PROCEEDINGS.

(1) *Rules applicable to Local Boards* (*a*).

1. Every local board shall from time to time make regulations (*b*) with respect to the summoning notice (*c*) place (*d*) management and adjournment (*e*) of their meetings (*e*), and generally with respect to the transaction and management of their business under this Act.

(*a*) By the L. G. A., 1894, s. 59, *post*, this schedule, so far as it is unrepealed, shall apply in the case of every urban district council other than a borough council, and every rural district council, as if such district council were a local board, except that the chairman of the council may be elected from outside the councillors. The schedule does not apply to municipal corporations, the meetings and proceedings of which are regulated by s. 198, *ante*, p. 464. Application of Schedule.

All correspondence between local authorities and the Central Authority (now the Ministry of Health) should be conducted in accordance with the following directions: 1. All correspondence should be conducted by the clerk, and no document, except returns, should be transmitted to the office, without a covering letter. 2. Every distinct subject should be dealt with in a separate letter. 3. Foolscap paper should be preferably used. 4. When previous correspondence has taken place on the subject, the official number and date of the last communication should be quoted. Correspondence with M. of H.

Schedule 1. 5. The name of the authority, and the address of the clerk should be placed at the head of all communications.

Part 1.

Use of Welsh language.

The L. G. B. once expressed the opinion, in reply to a Welsh district council, that the proceedings might be carried on either in English or Welsh, and that the minutes should follow the language used, but that any minutes relating to receipts or expenditure of money should be entered also in English, if Welsh is used: *cf. M'Bride* v. *M'Govern*, [1906] 2 I. R. 181.

Regulations.

(*b*) The P. H. A., 1848, s. 34, required every local board to make byelaws for these subjects, to be published and confirmed in the manner therein provided. Under this Act the district council are to make regulations, but such regulations are not byelaws, nor to be treated as such. The council may cause them to be published as they think fit. See s. 188, *ante*, p. 446.

Rescinding resolutions.

In *Mayer* v. *Burslem L. B.* (1875), 39 J. P. 437, a local board had made the following byelaw: "That no resolution of the local board be altered or rescinded unless one month's notice be given by the clerk to each member of the board, setting forth the proposed alteration, nor unless there be at least as many members of the board present at the meeting as were present at the meeting when such resolution was adopted." BLACKBURN, J., said that the last part of this byelaw might be invalid (see now rr. 2, 7, *post*, pp. 672, 673), but that the first part was valid, and was a very salutary and competent byelaw. Where a resolution is rescinded and later the rescinding resolution is itself rescinded, *semble*, the original resolution is as a general rule revived (*Weir* v. *Fermanagh C. C.*, [1913] 2 I. R. 63, 193); and see also as to rescission, *R.* v. *Tralee U. D. C.*, [1913] 2 I. R. 59. As to whether a resolution dismissing an officer is a resolution rescinding the resolution by which he was appointed, see *Ex parte Richards* (1878), 3 Q. B. D. 368; 42 J. P. 614.

It is doubtful whether a departure from any standing orders or regulations can be restrained except by means of an action brought in the name of the Attorney-General (*Watson* v. *Hythe Borough Council* (1906), 70 J. P. 153; 22 T. L. R. 245; *Weir* v. *Fermanagh C. C.*, *supra*.

Notice of meeting.

(*c*) When a meeting is required to be summoned by notice care must be taken to serve the notice on every member, as a default in this respect may render the meeting invalid. See *Dobson* v. *Fussey* (1831), 7 Bing. 305. The general rule as to the adjournment of meetings is that notice of such adjournment is not requisite (*Kerr* v. *Wilkie* (1860), 24 J. P. 211; 1 L. T. 501; *Wills* v. *Murray* (1850), 4 Ex. 843; 19 L. J. Ex. 209). But a previous byelaw or a future regulation may make a difference in this respect, and must, therefore, be looked to. For a case where an appointment of a local pension committee failed because such appointment was not on the agenda paper, see *R.* v. *McDonald*, [1913] 2 I. R. 55.

Invalid adjournment.

Where a chairman illegally declared a meeting to be adjourned and left, and the other members elected a chairman and transacted business, their acts were upheld as valid (*R.* v. *Doris* (1908), 45 Ir. L. T. 267).

Place of meeting.

(*d*) By the L. G. A., 1894, s. 61, a meeting of a district council shall not be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost. By *ibid.* s. 59 (3) any rural district council shall be entitled to use for the purpose of their meetings and proceedings the board room and offices of any board of guardians for the union comprising their district at all reasonable hours, and if any question arises as to what hours are reasonable it may be determined by the Local Government Board. See also s. 197 and notes thereto.

Admission of public.

(*e*) It was recognised as clear in *Purcell* v. *Lowler* (1877), 2 C. P. D. 215; 41 J. P. 789, that meetings of boards of guardians might be held in private; and COCKBURN, C.J., intimated that this was the proper course to take when matters affecting the conduct of a particular person were being discussed. It was held, too, in *Tenby Corporation* v. *Mason*, [1908] 1 Ch. 457; 72 J. P. 89, that neither burgesses nor reporters could claim to be present at meetings of a borough council. In consequence of this decision, however, the law was altered; and, subject to a proviso for excluding them temporarily, representatives of the press must be admitted to all meetings of a "local authority." They may also be admitted to meetings of committees; and, of course, the public may (as formerly) be admitted to meetings, if the authority see fit. See the Local Authorities (Admission of the Press to Meetings) Act, 1908, *post*.

In *Purcell* v. *Lowler*, *supra*, at a meeting of a board of guardians, the conduct of the medical officer, P., was discussed, several accusations of neglect of duty being made against him during the discussion. S., the proprietor of a newspaper, published a fair report of the proceedings, whereupon P. sued S. for libel. It was held that though the subject-matter was of public interest, yet as the accusations were made *ex parte*, there was no privilege to protect S., and he was liable. This decision, however, was discussed and explained in *Pittard* v. *Oliver*, [1891] 1 Q. B. 474; 54 J. P. 100. In that case, at a meeting of a board of guardians, of which the plaintiff had been the clerk, the defendant, a member of the board, in the course of a discussion concerning the plaintiff's accounts, made certain defamatory statements concerning the plaintiff without malice and bonâ fide, believing what he said to be true. In accordance with the regular custom of the board reporters were present at the meeting. It was held that the privilege which would have attached to the statements if made in the presence of guardians only was not taken away by the presence at the meeting of reporters or persons other than guardians. "The effect of what the court said in *Purcell* v. *Lowler* was, that though the occasion was privileged as regards the time and place at which the words were spoken, and as regards the person who spoke them, yet the matter was not one of public interest, and therefore the publication in the newspaper was not privileged. COCKBURN, C.J., seems to have suggested that it would have been better if reporters had not been present when the words were spoken; but he did not suggest that it was illegal for them to be there or that their presence took away the privilege." In *Mapey* v. *Baker* (1909), 73 J. P. 289; 53 Sol. J. 429, at a meeting of a board of guardians the chairman (the defendant) uttered certain defamatory statements concerning the method in which the rates were collected by the plaintiff as assistant overseer of a parish in the union. It was held that the board had an interest in the proper collection of rates within their union, that the occasion was therefore privileged, and that in the absence of malice the plaintiff could not succeed. On the same subject reference may be made to *Royal Aquarium Summer and Winter Garden Society, Limited* v. *Parkinson*, [1892] 1 Q. B. 431; 56 J. P. 404, where it was held that a county councillor making defamatory remarks at a meeting of the council is not entitled to absolute immunity in respect of such statement; but is entitled only to the ordinary privilege which applies to a communication made without express malice on a privileged occasion. See also *Botterill* v. *Halse* (1895), Times, June 25th, and 73 J. P. N. 13, 49; *Attwood* v. *Chapman*, [1914] 3 K. B. 275; *Smith* v. *Wall*, 79 J. P. N. 195; *Siddall* v. *Wallasey Corporation*, 79 J. P. N. 196; *Slack* v. *Barr* (1918), 82 J. P. 91.

A motion for an interlocutory injunction to restrain a local authority from publishing what was alleged to be a libellous report of a special committee was, on the facts, refused by JOYCE, J. The publication proposed was the inclusion of a copy of the report as part of the proceedings of the authority at the last meeting, a print of which was sent out to members (and to any ratepayers who applied for it) with the agenda paper for the next meeting (*Plant* v. *East Ham Corporation* (1906), Times, May 19th).

See as to the protection given by the Law of Libel Amendment Act, 1888, to the publication of the reports of meetings, *Sharman* v. *Merritt* (1916), 32 T. L. R. 360.

Disorder at meetings.

As to the removal of a disorderly member or stranger, reference may be made to *Doyle* v. *Falconer* (1866), L. R. 1 P. C. 328; *Dobson* v. *Fussey* (1831), 7 Bing. 305; *Barton* v. *Taylor* (1886), 11 App. Cas. 197. Generally speaking, the expulsion of a member, except for disorderly conduct of a serious character, is illegal, unless it be done under a byelaw or standing order (*Vaughan* v. *Hampson* (1875), 33 L. T. 15), and such byelaw or standing order must not only have the necessary sanctions, but also be within the powers of the statute.

With reference to disorderly conduct at a meeting of a district council, the L. G. B. stated that they had no authority in the matter, but that as regards the rule of law applicable to cases where the transaction of business by a local authority is materially interfered with, they considered that every deliberative body was empowered to protect itself in its deliberations. If these deliberations are materially obstructed by the disorderly conduct of any person present thereat, whether a stranger or a member, the general body are justified in removing that obstruction by requiring such person to leave the meeting, and if such requisition be not obeyed, by using

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such an amount of force as may be requisite to compel his retirement. The Board thought that this view applied in the case of a district council. They, however, pointed out that it is, of course, desirable that any force which it may be necessary to use should be applied by an officer or servant of the council, or, where the opportunity offers, by a peace officer. They added that this is the general power, but how far in any particular case there may or may not be such conduct as materially obstructs or impedes the deliberations of the body is a question which that body must determine for itself. See a police-court case, 31 M. C. C. 364. See also the Public Meeting Act, 1908, in App. I., Vol. II.

As to the power of amotion incident to every corporation as such, see *Booth* v. *Arnold*, [1895] 1 Q. B. 571; 59 J. P. 215.

Quorum.

2. No business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

The regulations generally provide for the action of the clerk in case a quorum do not attend. They usually require him to enter due notice of any failure of the meeting in the minutes.

Seven members of a local board consisting of nine members, resigned, so that the quorum required by this rule was not left. The two remaining members proceeded to fill up the vacancies. The board, as thus constituted, prescribed a building line under s. 155. It was held by the Court of Appeal that the filling up of the vacancies was "business" within the meaning of this rule, that the two members were not competent to transact it, and that the new members, therefore, were not duly elected, but that by r. 9, *post*, the objection to the building line, founded on the fact that some of the members of the board were not duly elected, was removed (*Newhaven L. B.* v. *Newhaven School Board* (1885), 30 Ch. D. 350).

Chairman.

3. Every local board shall from time to time at their annual meeting (*a*) appoint one of their number (*b*) to be chairman for one year at all meetings at which he is present.

(*a*) The annual meeting is held as soon as convenient after April 15th in each year. See r. 11, *post*, p. 675.

In *R.* v. *Rowlands*, [1910] 2 K. B. 930; 74 J. P. 453, it was held that when a district council meets for the first time after its election (the members of the preceding council having all gone out of office together) the former chairman, though re-elected as a councillor, has no right as such to take the chair and preside at the election of a chairman. This is so though less than a calendar year has elapsed since his own appointment as chairman. The proper course is to elect a temporary chairman to preside at the election; *cf.* also as to a parish council, *R.* v. *Jackson* (1913), 77 J. P. 443.

Before the decision in *R.* v. *Rowlands*, *supra*, the L. G. B. had advised, in reply to an inquiry, that if a chairman is elected from outside the council, he remains in office until the appointment of his successor at the annual meeting, although the annual meeting may not be held until after April 15th.

At an annual meeting of a rural district council at which the chairman and vice-chairman were absent, one of the councillors was elected chairman of the meeting. The retiring chairman was re-elected, and in his absence it was contended that the newly-elected vice-chairman should immediately on election take the chair. The L. G. B. stated that they had no authority to determine the question, but that as the temporary chairman was expressly appointed to act for the meeting, it did not appear to them that there was any legal objection to his presiding at the meeting, notwithstanding that a vice-chairman had been appointed at and was present at the meeting.

A chairman cannot be elected by ballot. There is no provision for electing one by lot in case of an equality of votes as there is in Ireland (see *R.* v. *McCarthy*, [1912] 2 I. R. 440). *Quo warranto* will lie to remove a person who has been elected chairman if it appears that he was disqualified or improperly elected (*R.* v. *Moriarty*, [1915] 2 I. R. 375).

(*b*) The chairman of a district council other than a borough council can now be elected from outside the councillors. See L. G. A., 1894, s. 59, *post*, p. 974.

As to the power to elect a vice-chairman, see the same section.

Vice-chairman.

4. If the chairman so appointed dies resigns or becomes incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying resigning or becoming incapable would have been entitled to continue in office, and no longer.

Vacancy in office of chairman.

If the chairman becomes disqualified to act as a member, he will become incapable of acting within these words. Sickness may also produce incapacity. It should, however, be observed that in the case of an urban district council no qualification appears to be necessary for an "outside" chairman.

Absence of chairman.

5. If the chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat.

This rule will apply only in the absence from a meeting of both chairman and vice-chairman, when the latter is appointed.

If the chairman arrive after the commencement of business, it is the usual course to allow him to take the chair.

Names of members present and votes to be recorded.

6. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

The concluding words of this rule prevent the votes from being given by ballot. The provision as to the recording of the names appears to be directory. In a case, however, where the sanction of the L. G. B. was sought by a rural district council to the appointment of an inspector of nuisances, the Board observed that the names of the councillors who voted for and against the appointment were not recorded on the minutes, and pointed out that under the circumstances the appointment was invalid and of no effect.

Decisions of questions.

7. Every question at a meeting shall be decided by a majority of votes of the members present, and voting on that question.

The words "voting on that question" removed the difficulty which had been found in cases when some of the members present did not vote on the question, but did not leave the room. As to what amounts to voting on the question, see *Ex parte Orde* (1871), L. R. 6 Ch. 881.

See also *Mayer* v. *Burslem L. B.*, *ante*, p. 670, as to the number of members who must vote in order to rescind a resolution.

No action lies against the chairman for ruling a motion out of order, unless he do so maliciously (*Breay* v. *Browne* (1896), 41 Sol J. 159). If a chairman refuses to put a resolution to the meeting, the proper remedy is to bring an action for an injunction to restrain him from refusing to put it and for a *mandamus* to hold a fresh meeting for the purpose (*Pender* v. *Lushington* (1877), Ch. D. 70). See also *R.* v. *Doris*, p. 670, *ante*.

Chairman's casting vote.

8. In case of an equal division of votes the chairman shall have a second or casting vote.

The opinion of the L. G. B. was once asked as to the power of the chairman of an urban district council to give a casting vote. The Board stated that it would seem from the observations of the judges in the case of *In re Louth Municipal Election, Nell* v. *Longbottom*, [1894] 1 Q. B. 767, that if before the chairman of the council votes it is found that the votes for and the votes against a question are equal, the vote which he is then entitled to give would be in the exercise of his right to vote as a duly qualified member of the council, and his right to give a second or casting vote would not in that case arise. If the chairman has voted as a member, and

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there is an equal division of votes, he would then, in pursuance of rule 8 of the First Schedule to the P. H. A., 1875, as applied to the meetings and proceedings of urban district councils by section 59 (1) of the L. G. A., 1894, be entitled to give, as chairman, a second or casting vote.

Validity of proceedings.

9. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election, or selection, or qualification of any members thereof.

This is similar to the provision in 5 & 6 Vict. c. 57, s. 12, in regard to boards of guardians, which was merely declaratory of a decision of the Exchequer Chamber in *R.* v. *Todmorden and Warden (Overseers of)* (1841), 1 Q. B. 185; and see *Newhaven L. B.* v. *Newhaven School Board*, cited in the notes to r. 2, *ante*, p. 672, and see also *Harries* v. *Crawford* (1919), 83 J. P. 197.

The acts of the council are not invalidated by reason of one of the members present having a personal interest in the subject-matter under discussion, and being allowed to speak and use his influence, and succeeding in inducing the council to take his view (*Murray* v. *Epsom L. B.*, [1897] 1 Ch. 35; 61 J. P. 71).

Cf. Municipal Corporations Act, 1882, ss. 42 (now, in part, repealed by 7 & 8 Geo. 5, c. 64), 102; and see *In re Louth Municipal Election, Nell* v. *Longbottom*, *ante* p. 674; *Bland* v. *Buchanan*, [1901] 2 K. B. 75; 65 J. P. 404.

Minutes to be kept and to be evidence.

10. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings (*a*); and, until the contrary is proved (*b*), every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

(*a*) In a case to which a local board were parties, the Court of Chancery ordered the minute book of the board to be sent up to London for inspection by the other side (*Att.-Gen.* v. *Whitwood L. B.* (1871), 40 L. J. Ch. 592; 19 W. R. 1107).

It is common in bye-laws and regulations to provide that the minutes of a meeting shall be read and confirmed at the ensuing meeting. Lord CAMPBELL, C.J., in *R.* v. *York (Mayor of)* (1853), 1 El. & Bl., at p. 594, says that "public bodies confirm the minutes of their last meetings, not meaning thereby that they give them force, but merely that they declare them accurate." See also *In re Lands Allotment Co.*, [1894] 1 Ch. 616.

See, as to the evidence of minutes, *Inglis* v. *G. N. Rail. Co.* (1852), 16 Jur. 895; *Miles* v. *Bough* (1842), 3 Q. B. 845; 12 L. J. Q. B. 74; *Sheffield, etc. Rail. Co.* v. *Woodcock* (1841), 7 M. & W. 574. Notwithstanding the provisions in the text as to the signing at the meeting, or at the next ensuing meeting, it seems that it is not a condition precedent to the admissibility of the minute, provided it has been signed at a subsequent time by the person who actually presided as chairman at either meeting (see *Southampton Dock Co.* v. *Richards* (1840), 1 M. & G. 448); and it would also seem that it is sufficient if the minutes of the adjourned meetings are signed (*Inglis* v. *G. N. Rail. Co.* (1852), 1 Macq. H. L. Cas. 112).

Inquiry was made of the L. G. B. as to whether the minutes of proceedings at the meetings of an urban district council and their committee might be printed and duly signed, instead of being written, and the Board stated that the matter would seem to be one as to which the council might make regulations under r. 1, *ante*, p. 669 (as rendered applicable to proceedings of urban district councils by the L. G. A., 1894, s. 59 (1)), and under Schedule I., Part IV., r. 1, to the Act of 1894. The Board added that no approval on their part was requisite, provided a record of the financial transactions of the council was duly entered in the minute book, as directed by Art. 3 of the Board's General Order for Accounts of March 22nd, 1880.

When, in proceedings before justices, proof of the minute authorising the proceeding was omitted to be given, but objection to the absence of the evidence was not then taken, but was sought to be taken on a case stated, the Divisional Court would not entertain the objection (*Kates* v. *Jeffery*, [1914] 3 K. B. 160).

(*b*) Note that the minutes are only to be primâ facie evidence of regularity; but as this force is given to them, great care is required in keeping them.

Annual meeting.

11. The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year.

By the P. H. A., 1848, s. 34, an annual meeting was required, but it was left to the local board to fix the time. 37 & 38 Vict. c. 89, s. 27, required it to be as soon as convenient after the annual election.

The L. G. B. once stated that it appeared to them that at any meeting held on April 15th the newly-elected members would be entitled to attend, and the retiring members would not. The newly-elected members come into office and the outgoing members retire at the earliest moment of April 15th (L. G. A. 1894, s. 23 (6)). The Board also intimated that there is no reason why a meeting should not be held on that day; but that such meeting would not be the "annual meeting," the annual meeting being required to be held as soon as may be convenient *after* April 15th.

First meeting in new district.

12. The first meeting of a local board for a district constituted after the passing of this Act, shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

The same person may be chairman of the meeting and for the year.

Saving for Oxford.

13. Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore.

This is no longer applicable. See the note to s. 342, *ante*, p. 668.

(2) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards.*

So much of this Schedule as relates to committees is repealed by the L. G. A., 1894, s. 89, *post*, p. 996. See now *ibid.*, s. 56, *post*, p. 970, as to committees.

Meetings.

1. A *committee or* joint board may meet and adjourn as it thinks proper.

See ss. 280—282, *ante*, pp. 617, 618, as to joint boards.

Quorum.

2. The quorum of a *committee or* joint board shall consist of such number of members as may be prescribed by the authority that appointed the *committee or* joint board, or, if no number is prescribed, of three members.

Chairman.

3. A *committee or* joint board may appoint a chairman of its meetings.

This chairman is intended to be appointed for the term of the board's existence, or, at least, for so long a time as he shall be qualified to act as member.

Absence of chairman.

4. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

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Decision of questions.

5. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.

See note on Part (1), r. 7, *ante*, p. 673.

Chairman's casting vote.

6. In case of an equal division of votes the chairman shall have a second or casting vote.

See note on Part (1), r. 8, *ante*, p. 673.

Validity of proceedings.

7. The proceedings of a *committee or* joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such *committee or* joint board or of any member thereof.

See note on Part (1), r. 9, *ante*, p. 674.

Minutes to be kept and to be evidence.

8. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where the minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

See the notes on Part (1), r. 10, *ante*, p. 674.

SCHEDULE II.

(I.) RULES FOR ELECTION OF LOCAL BOARDS (*a*).

(*a*) This Schedule is repealed by the L. G. A., 1894, *post*, but as it is incorporated to some extent by Sched. III., r. 6, *post*, p. 687, it is still necessary to retain the following rules:

Wards.

* * * * *

Number of votes.

8. No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.

9. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not reside.

Qualification of Electors, Scale of Voting, and Register of Owners.

"Owners."

10. The word "owner" when used in relation to the right of voting at any election of a local board (*a*), shall mean any person (*b*) for the time

being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rack-rent (*b*), or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rack-rent (*b*) of any such property.

(*a*) It will be remembered that there is another definition of owner in s. 4, *ante*, p. 8.

(*b*) The words "person" and "rack-rent" are defined in s. 4, *ante*, pp. 6, 15. See also r. 11, note (*a*), *infra*. Note that the word "owner" *means*, and not merely *includes*, the persons named. Hence, there may be persons who are owners in the ordinary sense, yet are not owners within the meaning of this definition. For example, the owner of land let at a ground-rent is not in occupation, nor does he receive the rack-rent. Again, a trustee appears to be excluded from the definition as he does not receive the rent on his own account.

"Ratepayers."

11. A person (*a*) shall not be deemed a ratepayer (*b*) or be entitled to vote as such at any such election unless he has been rated (*c*) to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid (*d*) all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this Act, except rates which have been made (*e*) or become due within the six months immediately preceding (*f*).

(*a*) According to the definition of *person* in s. 4, *ante*, p. 6, this word would include a corporation aggregate, but the general law relating to elections prevents such a corporation from voting. 30 & 31 Vict. c. 106, s. 10, provides a mode by which a corporation may vote as ratepayers through an officer nominated on their behalf, and that section may be considered as applicable to elections under this Act. It will be seen from r. 15, *post*, p. 679, that corporations who are owners can appoint proxies to vote for them in that capacity.

By the Interpretation Act, 1889, in all statutes the masculine gender includes the feminine; and as there was nothing at common law to prevent a woman from voting (see *Olive* v. *Ingram* (1739), 2 Stra. 1114), an unmarried woman if duly qualified might always vote. And see now the Sex Disqualification (Removal) Act, 1919, as to the removal of disqualification by sex or marriage.

Bankruptcy does not disqualify if the voter continues to be rated and has paid the rate.

The common law disqualification of persons who are aliens, infants, or lunatics, will apply to the ratepayer.

By 33 & 34 Vict. c. 23, s. 2, a person convicted of felony is disqualified from exercising any right of suffrage, unless he shall be pardoned under the Great Seal, or shall have suffered the sentence inflicted upon him. The Corrupt Practices Act, 1883, and the Municipal Elections (Corrupt Practices) Act, 1884, *post*, Vol. II., disqualify persons convicted of offences under those Acts for periods depending upon the offence of which the voter has been convicted. See also the Public Bodies Corrupt Practices Act, 1889, *post*.

(*b*) Where the owner was rated in the place of the occupier under 13 & 14 Vict. c 99, the occupier was held not to be a ratepayer competent to vote (*Richardson* v. *Gladwin* (1858), 27 L. J. M. C. 192; 26J. P. 688). But by 32 & 33 Vict. c. 41, s. 19, the name of every occupier is to be entered in the rate book, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, and by the same section it was provided that the occupier should be deemed to be truly rated for any qualification or franchise depending upon rating, and the occupier whose name should have been omitted should, notwithstanding such omission, and though no claim should be made, be entitled to such qualification and franchise. Now, however, s. 19 of 32 & 33 Vict. c. 41, has been repealed by the Representation of the People Act, 1918, so far as it relates to franchise and any disqualification which depends on franchise. The Court of

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Common Pleas decided that s. 19 did not operate universally, but only in the cases provided for by ss. 3 and 4 of the Act (*Cross* v. *Alsop* (1870), L. R. 6 C. P. 315; 35 J. P. 153). But the Court of Queen's Bench differed from this view, and held that the section was of general application (*Smith* v. *Seghill* (*Overseers of*) (1875), L. R. 10 Q. B. 422; 40 J. P. 228; *Barton* v. *Birmingham* (*Town Clerk of*) (1878), 48 L. J. C. P. 87; 39 L. T. 352), and this view was confirmed by 41 & 42 Vict. c. 26, s. 14. See also *St. Peter's Cornhill, Re* (1886), 2 T. L. R. 870; *Palmer* v. *Wade*, [1894] 1 Q. B. 268; 58 J. P. 511. Reference has already been made (*ante*, p. 161) to the distinction between lodgers and occupiers.

An owner who is rated and pays the poor rates under the Act just referred to is entitled to vote as a *ratepayer* under this Act (*R.* v. *Hampton* (1865), 6 B. & S. 923; 30 J. P. 246). And see also *Richardson* v. *Gladwin*, *ante*, p. 677; *R.* v. *Kirby* (1861), 31 L. J. Q. B. 3; 29 J. P. 196; *Lambe* v. *Grieves* (1862), 8 Jur. (N.S.) 288; *Powell* v. *Jones* (1865), 18 C. B. (N.S.) 83; 29 J. P. 583. But this apparently applies only to an owner who is *rated* under 32 & 33 Vict. c. 41, s. 4, not when the owner agrees to pay the rates under s. 3. See *Mogg* v. *Clark* (1885), 16 Q. B. D. 79; 50 J. P. 342.

(*c*) The rate must have been a valid rate. It must have been duly allowed and published, and be legal in other respects. Note that the provision as to *rating* applies only to the *poor rate*, not to rates made under this Act, though these must be paid to complete the qualification.

(*d*) 32 & 33 Vict. c. 41, s. 15, enables a poor rate to be made payable by instalments, and makes payment of each instalment available in respect of any qualification or franchise *pro tanto*, while s. 7 rendered payment of the poor rate by the owner available as a payment by the occupier in full for the purpose of any qualification or franchise, which, as regarded rating, depended upon the payment of the poor rate notwithstanding any allowance or deduction made to the owner. By the Representation of the People Act, 1918, the last-mentioned section is repealed so far as it relates to franchise and any disqualification which depends on franchise.

(*e*) A poor rate is now to be deemed to be made on the day when it is allowed by the justices (32 & 33 Vict. c. 41, s. 17).

(*f*) It is presumed that if the rate has been made payable by instalments, payment of such instalments, as they become due, will satisfy this enactment.

Where the occupiers of small properties are not rated to the district rate, the provisions contained in 32 & 33 Vict. c. 41, which relate to the poor rate, will not apply, but as they are not rated, it is submitted that they cannot be in default, and that, therefore, they are entitled to vote.

Scale of votes.

12. Owners of and ratepayers in respect of property situated within the district for which the election is held shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person (*a*) is entitled to vote is rated to the poor rate on a rateable value (*b*) of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds, and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds, and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds and is less than two hundred and fifty pounds, he shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes.

(*a*) As this scale applies to owners as well as to ratepayers, this word includes a corporation aggregate. See r. 11, note (*a*), *ante*, p. 677.

(*b*) This means *net annual value* as defined in s. 4, *ante*, p. 15.

Votes of "occupying owners."

13. Any person (*a*) who is owner and also bonâ fide occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation.

(*a*) See rr. 16 and 17, *infra*.

14. Owners (*a*) may give their votes either personally or by proxy.

(*a*) This word is used generally, and extends the provisions of the former Acts, in which the right of voting by proxy was given only to corporations aggregate, joint stock companies or bodies of proprietors or undertakers.

15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the Form M. in Schedule IV. to this Act.

The Commissioners of Inland Revenue have advised that this appointment requires a 10*s.* stamp (Stamp Act, 1891, Sched. I., Proxy, Letter of Attorney (6)): see *R.* v. *Kelk* (1840), 12 A. & E. 559. An impressed stamp should be used. The penalty for making, executing, or voting, or attempting to vote under, an unstamped proxy is £50. And every vote given or tendered under an unstamped proxy is void (Stamp Act, 1891, s. 80).

The appointment of a proxy by a corporation must be under seal.

No qualification of any kind is required by a proxy, and he may be appointed by any number of owners. His appointment may be limited to the particular occasion, or it may be general, in which case it will continue until revoked, or so long as the appointing owner retains the property.

16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons. Votes of corporations.

It has already been pointed out that the corporation cannot vote individually as *ratepayers*. See the note to r. 11, *ante*, p. 677.

17. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners. Votes of partners.

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20. A claim (*a*) by an owner or proxy to be entered on the register shall state his name and address (*b*) within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof. Claims to be registered.

(*a*) There is no reason for supposing that this claim requires a stamp.

(*b*) An *address* is a place to which reference may be made or a letter may be directed. It need not be a *residence*, or even a *place of business*; but note that it must be within the district.

21. A claim by an owner or proxy may be made by writing in the Form L. in Schedule IV. to this Act.

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Election.

36. (*a*) The returning officer shall *after the close of the revision of the register, but* not less than fourteen days before the last day appointed for Returning officer's notice.

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delivery to him of *nomination* papers, publish a notice, signed by him, and specifying—

The number and qualification of the persons to be elected ;

The place where the nomination papers hereinafter mentioned are to be delivered or sent to him ;

The last day on which they are to be delivered or sent in ;

The mode of voting *in case of a contest ;*

The day or days on which the voting papers will be delivered and the day on which they will be collected ; and

The place for the examination and for the casting up of the votes ;

and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed (*b*).

(*a*) This Rule, except in so far as it is printed in italics, is incorporated by Sched. III., r. 6, *post*, p. 687. Having regard to that Rule, for "nomination papers" read "voting papers."

(*b*) The parochial notices are probably the notices of vestry, etc., which are affixed, according to 1 Vict. c. 45, on the doors of all churches and chapels within the district. The notice must be affixed to the principal door of every church or chapel, however recently built; but this applies only to churches and chapels of the Established Church, not to churches where Divine service has ceased to be celebrated, not to places other than churches or chapels in which Divine service is celebrated, nor to dissenting chapels (*Ormerod* v. *Chadwick* (1847), 16 M. & W. 367 ; 11 J. P. 138 ; *Ex parte Warblington Overseers* (or *R.* v. *Deverell*) (1854), 3 El. & Bl. 372 ; 23 L. J. M. C. 121 ; *R.* v. *Whipp* (1843), 4 Q. B. 141 ; 12 L. J. M. C. 64 ; *Edwards* v. *Hatton* (1866), L. R. 1 Ad. & Ec. 21 ; 30 J. P. 211). For a case in which publication on an outer gate of a churchyard was held good, see *Empson* v. *Metropolitan Board of Works* (1861), 25 J. P. 677.

List of voters.

37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote *at the election.*

Inspection of books, etc.

38. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the election is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer (*a*). Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds (*b*).

(*a*) The clerk or overseer is not authorised to charge for the inspection, but he is not required to attend the returning officer with any document, and therefore if the latter desire such attendance he must be prepared to pay for it. Note that this Rule does not authorise the taking of the books out of the custody of the officers having the legal charge of them.

(*b*) See as to the recovery of this penalty s. 251, *ante*, p. 551.

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Delivery of voting papers.

44. The returning officer shall, three days at least (*a*) before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address (*b*) stated in the *register or* claim of each owner and proxy, and at the residence (*c*) within the district of each ratepayer entitled to vote therein.

(*a*) These days are to be both exclusive : see *Zouch* v. *Empsey* (1821), 4 B. & A. 522 ; *R.* v. *Salop JJ.* (1838), 7 L. J. M. C. 56 ; 8 A. & E. 173.

(*b*) See r. 20, *ante*, p. 679.

(*c*) There is here an addition to the provision in the P. H. A., 1848, s. 24, as the residence of the ratepayer at which the delivery is to be made must be within the district. Delivery need not be made out of the district, but an elector whose residence is without the district may vote if he proceed according to the provisions of r. 49, *infra*.

The fact that partisans of a scheme in connection with which a poll was to be taken accompanied the messengers of a local authority, who were delivering voting papers, and at the same time distributed pamphlets intended to influence the voting, was held by the court not to be a sufficient ground for ordering a new poll to be taken. No opinion was expressed as to whether the votes in question had been rendered invalid by what had been done (*R.* v. *Exeter Corporation* (1903), Times, March 6th.

Filling up voting papers.

45. Each voter shall write his initials in the voting paper delivered to him *against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote*, and shall sign such voting paper.

In *R.* v. *Strachan* (1872), L. R. 7 Q. B. 463; 36 J. P. 727, it was held that 33 & 34 Vict. c. 97, s. 102, as to the stamp on a voting paper, did not apply to such papers at municipal elections.

The voter is here required only to sign the voting paper, and there is no place for his address in the form given in the Schedule; but the directions there appended require him to state his address. It is probably sufficient to sign according to the requisition in the text.

As no voting paper should be sent to a firm, so the signature of a firm is insufficient.

A person who cannot write may mark his paper in the manner provided by r. 47, *infra*.

The text makes no provision for signature by an agent. See, as to the fabrication of voting papers, r. 69, *post*, p. 684.

Voting by proxies.

46. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

The remarks made upon the preceding Rule apply here.

Illiterate voters.

47. Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

There is a discrepancy between this Rule and the "directions for voting" appended to Form O. in Sched. IV. By this Rule the voter is to affix his mark at the foot of the paper, and the witness is then to sign his name against the mark and to write the initials of the voter against the names of the candidates voted for. By the directions for voting the voter is to make his mark instead of initials.

Collection of voting papers.

48. The returning officer shall cause the voting papers to be collected on the day of collection (*which shall not be later than the seventh of April*) by such persons as he may appoint.

See the provision in r. 66, *post*, p. 683, as to Sunday and other special days.

What voting papers to be accepted.

49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter (*a*), nor unless the same is collected by the persons appointed for that purpose: Provided—

(a) That if any person entitled to receive a voting paper has not received

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a voting paper as aforesaid (*b*), he shall, on personal (*c*) application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him :

(b) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same (*d*), the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes (*e*).

(*a*) That is, *reddendo singula singulis*, to the address of the owner and to the residence of the ratepayer. See r. 9, *ante*, p. 676, as to the residence of the ratepayer in a ward.

(*b*) This may happen if a ratepayer residing out of the district has not received a voting paper, or if an owner having no address in the district has not received one, or if the distributor has negligently or accidentally omitted to serve one on a person within the district. If a voting paper has been duly left, and has been lost or accidentally destroyed, the case does not appear to be within this proviso. If a paper, which has been left is defective, probably this is equivalent to there having been no paper delivered.

(*c*) Note the introduction of this word. The voter must apply in person.

(*d*) The default of the voter himself, whether accidental or negligent, gives him no right under this proviso.

(*e*) Note that under the first proviso application must be made before the day of collection. Under the second the paper may be delivered before twelve o'clock on the day appointed for casting up the votes.

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Counting of Votes.

Method of counting.

51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed (*a*) for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit ; he shall cast up such of the votes as he finds to be valid, and to have been duly given collected or received, and shall ascertain the number of such votes *for each candidate* (*b*).

. . . . .

(*a*) The corresponding provision in 11 & 12 Vict. c. 63, s. 27, was held by CAMPBELL, L.C.J., in *R.* v. *Cross* (1852), 19 L. T. (o.s.) 36 ; 16 J. P. 214, to be merely directory. He held also that the casting up at the clerk's room, which was away from the board room, was valid. Note, however, that the place appointed must now be stated in the notice of election : see r. 36, *ante*, p. 679. *Quære*, therefore, if the provision in the text would be held to be directory only.

(*b*) The returning officer may at this time correct any error which he may have made in filling in the number of votes assigned to the voter. The remainder of this rule is applicable under Sched. III., r. 6, *post*, p. 687.

* * * * *

List of candidates.

53. The returning officer shall also cause to be made a list containing *the names of the candidates*, together with (in case of a contest) the number of votes given for each, *and the names of the persons elected*, and shall sign and certify such list, and shall deliver the same, together with the

nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

Inspection of documents.

54. Such list shall during office hours be open to public inspection, together with all other documents relating to the *election*, for six months after the election, without fee or reward ; and the returning officer shall, as soon as may be after the completion of the *election*, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the *election* has taken place.

Rules 53 and 54 may apply to a poll under Sched. III., so far as regards the signing and delivery of the list of votes, the deposit of the voting papers and their inspection. As to publication of the result, see Sched. III., r. 7.

* * * * *

General Provisions.

Excluded days.

66. Whenever the day appointed for the performance of any act in relation to any *election* is a Sunday, Christmas Day, or Good Friday, a Bank holiday (*a*), or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid ; and in that case on the day following such excluded day.

(*a*) These are provided for in 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13. They are Easter Monday, Monday in Whitsun week, the first Monday in August, December 26th, if a week day, and if not, December 27th.

* * * * *

Penalty on returning officer for default.

68. If the returning officer refuses or neglects (*a*) to comply with any of the provisions of this Schedule *relating to elections*, he shall be liable to a penalty not exceeding fifty pounds (*b*) ; and any person employed *for the purposes of any such election* by or under the returning officer who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds (*b*).

(*a*) This penalty is incurred by mere neglect though not wilful or corrupt (see *King* v. *Burrell* (1840), 9 L. J. Q. B. 337 ; 12 A. & E. 460 ; *Hunt* v. *Hibbs* (1860), 29 L. J. Ex. 222 ; 24 J. P. 118). In *R.* v. *Lofthouse* (1866), L. R. 1 Q. B. 433 ; 30 J. P. 453, it was stated that erroneous entries in the voting papers might subject the returning officer to a penalty. If the chairman, knowing a voter to be qualified, maliciously refuses to receive his voting paper, he will be liable to an action at the suit of the voter ; but if he rejects the vote bonâ fide believing the voter not to be qualified, he is not liable, though his belief may be erroneous (*Tozer* v. *Child* (1857), 7 El. & Bl. 377 ; 21 J. P. 516). It has been held with respect to the duties of a returning officer under the Ballot Act, 1872, that when such duties are ministerial only, an action for the breach of them will lie at the suit of a party aggrieved, who has thereby lost the election, without malice or want of reasonable care on the part of the defendant (*Pickering* v. *James* (1873), L. R. 8 C. P. 489 ; 37 J. P. 679).

(*b*) See, as to the recovery of these penalties, s. 251, *ante*, p. 551. See also s. 253, *ante*, p. 559, as to the persons who may institute proceedings to recover the penalties. A chairman of a local board was charged with neglecting to deliver the voting papers to the local board (see r. 53, *ante*, p. 682). The prosecutor, L., though a member of the board, had not been a candidate at the election, and the persons returned at such election were properly elected. L. had not obtained the consent of the Attorney-General or of the local board to prosecute (see s. 253, *ante*, p. 559). It was held that as L. was not a party aggrieved, the justices had no jurisdiction to hear and determine the information (*R.* v. *Blanshard* (1866), 30 J. P. 280).

Schedule 2.

Part 1.
Offences at elections.

69. Any person who (*a*)—

Fabricates (*b*) in whole or in part or alters defaces destroys abstracts or purloins any voting paper, or

Personates any person entitled to vote *at any election* (*c*), or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote (*d*), or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfully authorised so to do,

shall be liable to a penalty not exceeding twenty pounds (*e*), or, in the discretion of the court, to imprisonment with or without hard labour for any period not exceeding three months.

(*a*) This section is taken from 14 & 15 Vict. c. 105, s. 3, with reference to the election of guardians, though the language is slightly altered. Several prosecutions have taken place upon that section, and persons have been convicted of offences under it. At the Spring Assizes for Yorkshire in 1858 three persons were convicted before BYLES, J., of a common law offence for conspiring to defeat the due election of guardians by causing forged proxy appointments to be used and acted upon at such election, and were sentenced to imprisonment (*R.* v. *Beckwith and Others*). The offences mentioned in this section are to be deemed illegal practices within the meaning of the Municipal Corporations (Corrupt Practices) Act, 1884, *post*, Vol. II., but without prejudice to the punishment under this rule of persons guilty of such offences (47 & 48 Vict. c. 70, s. 36).

(*b*) At an election of guardians a voter's wife told W. that she had authority from her husband to fill up his voting paper, and W. thereupon caused her to put her mark on the voting paper, he putting the voter's initials opposite to the candidate's name and attesting the paper, which was received as if duly marked, etc., by the voter himself. W., having been convicted under 14 & 15 Vict. c. 105, s. 3, of unlawfully fabricating a voting paper, it was held that there was no evidence to justify the conviction (*Wickham* v. *Phillips* (1883), 47 J. P. 612). And see the cases cited in note (*d*), *infra*.

(*c*) When the person who should have been so entitled is dead, and he is personated at the election, the case is not provided for by this section (*Whiteley* v. *Chappell* (1868), L. R. 4 Q. B. 147; 33 J. P. 244).

(*d*) Where a person signed the name of a voter to a paper with the consent of the voter's wife, but without his knowledge, and believing that he might do so, it was held that he was not liable to a penalty under the corresponding enactment in 21 & 22 Vict. c. 98, s. 13 (*Aberdare L. B.* v. *Hammett* (1875), L. R. 10 Q. B. 162; 39 J. P. 69).

The appellant was charged with unlawfully assuming to act for one H., a voter in an election of guardians. The appellant went to the voter's house, and the mother and brother of the voter having told him that the paper was not filled up, he offered to fill it up, and then put in a candidate's name without asking them which candidate. The paper was afterwards counted for that candidate. It was held that, though there might have been evidence to convict of fabricating a voting paper, the appellant was wrongly convicted of assuming to act, as it was not proved that H. did not afterwards agree to the filling up of the paper (*Bell* v. *Morson* (1879), 40 L. T. 128; 43 J. P. 174).

The respondent, a candidate at an election of members of a local board, called at the house of a voter to whom a voting paper had been sent, and asked her how she intended to vote and to hand him the voting paper, which she did. He then inquired if she knew how to fill it up, and she replied in the affirmative. The respondent thereupon, without any authority, express or implied, from the voter, wrote in pencil the initials of the voter against his own name. The voter objected to his doing so. The respondent left the voting paper with the voter, with her initials so written by him against his own name, but with no other mark upon it. The voter subsequently struck out the initials so written by the respondent, and placed her initials against the names of three other candidates, and signed her own name to the voting paper. It was found that the respondent so pencilled the initials

of the voter with the intent of indicating on her behalf that she intended to vote for him, and of inducing and procuring her to vote for him. The respondent was successful at the poll. A petition was lodged against his return on the ground of illegal practices (*inter alia*) of fabricating in whole or in part a voting paper, and of falsely assuming to act in the name or on behalf of a voter:—*Held*, that the act of the respondent did not amount to a fabrication in whole or in part of the voting paper, nor to falsely assuming to act in the name or on the behalf of the voter within the meaning of this rule (*Knighton Local Government District Election Petition; Gough* v. *Murdoch* (1887), 57 L. T. 308; 51 J. P. 471).

(*e*) See, as to the recovery of the penalty, s. 251. Note that a candidate at an election is a party aggrieved by the mere fabrication of a voting paper, so as to be entitled to lay an information under this rule without the consent of the Attorney-General under s. 253, *ante*, p. 559 (*Verdin* v. *Wray* (1877), 2 Q. B. D. 608; 41 J. P. 484).

SCHEDULE II.

PART II.

This part is also repealed by the L. G. A., 1894.

SCHEDULE III.

Rules as to Resolutions of Owners and Ratepayers (*a*).

Meeting for resolution.

1. For the purpose of passing a resolution of owners (*b*) and ratepayers under this Act (*c*), a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners resident in the district or place with respect to which the resolution is to be passed.

(*a*) Such a resolution is required under s. 166, *ante*, p. 376, and was formerly required under ss. 216 (now obsolete in this connection) and 272 (also, in practice, obsolete), *ante*, pp. 496, 610. It was also formerly required under the Borough Funds Act, 1872, s. 4, *post*, Vol. II., for charging on the rates the cost of promoting or opposing Bills in Parliament. The Borough Funds Act, 1903, s. 1, substitutes, however, as to the promotion of a Bill, the requirements contained in the First Schedule to that Act; and, as to the opposition to Bills, s. 7 provides that the provision contained in the Borough Funds Act, 1872, s. 4, that no expense in opposing a Bill shall be charged unless the opposition has had the consent of the owners and ratepayers of the district, shall cease to apply.

Inquiry was once made of the L. G. B. as to whether an urban council whose district it was proposed to incorporate in a neighbouring borough could at the expense of the rates take the opinion of the inhabitants by means of a poll. The Board stated that they were not aware of any statutory authority under which the council could take a poll on the question, and that accordingly it did not seem to them that the expenses could be properly charged to the rates.

(*b*) See the definition of *owner* and *ratepayer* in Sched. II., rr. 10, 11.

(*c*) These words appear to restrict the rules of this Schedule to meetings under this Act. But this Act is, according to s. 313, *ante*, p. 652, to be read into any other previous Act which refers to any of the Sanitary Acts.

Summoning officer.

2. The summoning officer of such meeting shall be—

In boroughs, the mayor;

In improvement Act districts, the chairman of the improvement commissioners;

Schedule 3.

In local government districts, the chairman of the local board (*a*);

In places situated in any rural district or districts and having known and defined boundaries (*b*), the churchwardens (*c*) or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisidiction; or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by Order of the Local Government Board (*b*), the Board shall by such Order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room (*d*).

(*a*) Improvement Act Districts and Local Government Districts are now known as urban districts. See the L. G. A., 1894, s. 21, *post*.

(*b*) See s. 272, *ante*, p. 610, and the notes thereon.

(*c*) It is presumed that the word churchwardens will include *chapelwardens* where the place is a chapelry. But it is very doubtful whether the churchwardens of a *parish* can act for a part of that parish, such as a township. The churchwardens of an ecclesiastical district formed under 6 & 7 Vict c. 37, are included in the term (*R.* v. *Northowram and Clayton* (1865), L. R. 1 Q. B. 110; 30 J. P. 181).

(*d*) To obtain this appointment there must be a communication in writing to the M. & H. who must be satisfied of the inability or refusal of the proper officer to perform the duties.

Security for costs.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed (*a*), of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a court of summary jurisdiction (*b*).

(*a*) See note to r. 8, *post*, p. 688.

(*b*) See the definition, *ante*, p. 36.

Notice of meeting.

4. The summoning officer shall, on such requisition as aforesaid (*a*), fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place;

By causing such notice to be affixed to the principal doors of every church and chapel (*b*) in the place to which notices are usually affixed.

(*a*) This officer must satisfy himself of the sufficiency and legality of the requisition. He has absolute discretion as to the time and place of meeting.

(*b*) The church and chapel must mean, according to the interpretation of similar words in 1 Vict. c. 45, church and chapel of the Established Church. See note on Sched. II., r. 36, *ante*, p. 680. Note that the mode of publication is here prescribed; in other sections of the Act there is no prescribed mode. See also *Edwards* v. *Hatton* (1866), L. R. 1 A. & E. 21; 30 J. P. 211.

Schedule 3.

5. The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside (*a*), in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time (*b*). Chairman.

(*a*) These words removed the inconsistency which arose from 21 & 22 Vict. c. 98, s. 13, under which the meeting were to choose their chairman, but if a poll were demanded, the summoning officer had to conduct it (*Ex parte Littleborough L. B.* (1870), 22 L. T. 437 ; 34 J. P. 469). The summoning officer will preside throughout unless unable or unwilling.

(*b*) In 21 & 22 Vict. c. 98, s. 13, the adjournment was to be *from day to day*, and this was interpreted to mean from one day to the next day. By the words of the text the adjournment may be to days at any intervals. But though the meeting must determine whether the adjournment shall take place, the decision as to when the adjourned meeting shall be held and when the poll shall be taken rests with the chairman (*R.* v. *D'Oyley* (1840), 9 L. J. M. C. 113, 117 ; 12 A. & E. 139). See also note (*a*) under the next rule.

Proceedings at meeting.

6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption : Provided, that if any owner or ratepayer demands (*a*) that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act (*b*) ; except that in districts or places where there is no register of owners and proxies under this Act (*c*), any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days (*d*) before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply (*e*).

For the purposes of such poll the summoning officer shall be the returning officer (*f*), and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this Schedule.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same (*g*), a declaration by the chairman shall, in the absence of proof to the contrary (*h*), be sufficient evidence of the decision of such meeting.

(*a*) This gives to any owner or ratepayer the right to demand a poll whether the meeting wish it or not. Such a right exists as incident to similar meetings at common law, such as meetings of vestry or meetings under the Public Libraries Acts (*R.* v. *St. Matthew, Bethnal Green* (1875), 32 L. T. 558 ; 39 J. P. 502 ; *R.* v. *Wimbledon L. B.* (1882), 8 Q. B. D. 459 ; 46 J. P. 292). At a meeting of owners and ratepayers A. demanded a poll ; B., also a duly qualified voter, said, " I second the demand, if necessary " ; after the termination of the meeting, A. purported to withdraw his demand, and on the question arising whether or not a poll should be taken it was held that a *mandamus* must go ordering the mayor to take a poll, on the ground that B. had himself made an effective demand for one by seconding A.'s demand : *semble*, also that a valid demand cannot be withdrawn after the

Schedule 3.

meeting, for other persons might have abstained from themselves asking for a poll upon hearing such demand made (*R.* v. *Mayor of Dover, Ex parte Bradley*, [1903] 1 K. B. 668; 67 J. P. 81). Where a meeting was adjourned on motion made, and the chairman allowed the meeting to separate without putting the resolution to them, it was held that another meeting might be called by the summoning officer (*R.* v. *Bird* (1864), 28 J. P. 279). As to the adjournment of the meeting, see *R.* v. *Norman* (1865), 29 J. P. 407. As to a case where a poll is demanded by an unqualified person, and the demand is not challenged or withdrawn, see *R.* v. *Miles, Ex parte Cole* (1895), 64 L. J. Q. B. 420; 59 J. P. 407.

(*b*) See the several rules of the schedule, *ante*, pp. 676—685.

(*c*) The town council of a borough was not bound under Sched. II., r. 19, to keep a register of owners and proxies for the purpose of taking a poll in the borough under the Borough Funds Act, 1872. But a reasonable time must be allowed for owners and proxies to send in their claims. Therefore, when a poll was demanded on December 28th, and a notice was published that voting papers would be delivered on January 13th, but such notice was not published until after January 1st, an injunction was granted restraining the corporation from applying the public funds in payment of parliamentary expenses until the consent of the owners and ratepayers had been duly obtained (*Ward* v. *Sheffield* (*Mayor, etc. of*) (1887), 19 Q. B. D. 22).

(*d*) The words *at least* signify that both days are to be excluded (*R.* v. *Salop JJ.* (1838), 7 L. J. M. C. 56; 8 A. & E. 173).

(*e*) See Sched. II., r. 66, *ante*, p. 683.

(*f*) It is presumed that this will not be the case when the summoning officer has been unable or unwilling to preside, and a chairman has been chosen in his place.

(*g*) When is this withdrawal to take place? Apparently before the papers are sent out, and perhaps before the close of the meeting at which the demand for the poll was made. See *R.* v. *Mayor of Dover*, *supra*.

(*h*) This declaration is not absolutely conclusive, so that defaults which vitiate the proceedings may be shown by persons interested who dispute the result.

Publication of resolution.

7. A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

See as to the publication of the notices, r. 4, *ante*, p. 686, and the notes thereon. The requisitions of this rule are not conditions precedent to the validity of the resolution, or to its being acted upon. No notice is required to be given of the rejection of the resolution, though it will be well if the summoning officer do communicate it to the Ministry of Health in any case where they have taken action in the matter.

Costs.

8. Where in pursuance of a resolution passed in manner provided by this Schedule any place is constituted a local government district (*a*), all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district (*b*), such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act (*c*).

(*a*) See s. 272, *ante*, p. 610, but see note (*a*) under s. 270, *ante*, p. 609.

(*b*) This passage applies to such a resolution as is required under s. 166, *ante*, p. 376. See note (*a*) to r. 1, *ante*, p. 685. The L. G. B. expressed the opinion that whether the resolution is passed or not the expenses may properly be paid out of the general district rate.

(*c*) This fund and rate will be the general district rate, except in the cases provided for by s. 207, *ante*, p. 469.

SCHEDULE IV.

FORMS.

(As to the use of these forms see s. 317, *ante*, p. 653.)

FORM A.

Form of Notice requiring Abatement of Nuisance (a).

To [*person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health Act, 1875, the [*describe the local authority*], being satisfied of the existence of a nuisance at [*describe premises or place where the nuisance exists*], arising from [*describe the cause of nuisance, for instance*, want of a privy or drain; *or for further instance*, a ditch or drain so foul as to be a nuisance or injurious to health; *or for further instance*, swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [*state any things required to be done or works to be executed*] (*b*).

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of local authority.

(*a*) See s. 94, *ante*, p. 176.
(*b*) See s. 96, note (*c*), *ante*, p. 183, and the cases there cited

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FORM B.

Form of Summons (a).

Summons.

To the owner *or* occupier (*b*) of [*describe premises*], situated at [*insert such description as may be sufficient to identify the premises*] *or* to *A. B.* of .

County of [*or* borough of *etc. or* district of *or as the case may be*], to wit.

You are required to appear before [*describe the court of summary jurisdiction*], at the petty sessions [*or* court] holden *at* on the day of next, at the hour of in the noon, to answer the complaint this day made to me by that in or on the premises above mentioned [*or* in or on certain premises situated at No. in the street in the parish of *or such other description or reference as may be sufficient to identify the premises*], in the district, under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A. B.* [*or in case the nuisance be discontinued but likely to be repeated, say*, there existed recently, to wit, on or about the day of on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*etc.*], and although the same has since the said last-mentioned day been abated or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under my hand and seal this day of 18 .

J. S. (L.S.)

(*a*) See s. 95, *ante*, p. 182.
(*b*) See s. 267, note (*f*), *ante*, p. 595.

Schedule 4.

Forms.

FORM C.

Form of Order for Abatement or Prohibition of Nuisance (a).

To the owner [*or* occupier] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*], *or* to *A. B.* of (*b*) .

County of / [*or* borough, *etc.* of / *or* district / of / *or as the case may be*].

WHEREAS on the day of complaint was made before Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin [*or as the case may be*] by that in or on certain premises situated at in the district, under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or* occupier] of the said premises [*or* was caused by *A. B.*] [*If the nuisance has been removed, say,* the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, *etc.*, and although the same is now removed, the same or the like nuisance is likely to recur on the same premises].

And whereas the owner [*or* occupier] within the meaning of the said Public Health Act, 1875 [*or* the said *A. B.*], hath this day appeared before us [(*or* me) *describing the court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say*], and whereas it hath been this day proved to our (*or* my) satisfaction that a true copy of a summons requiring the owner [*or* occupier] of the said premises [*or* the said *A. B.*] to appear this day before us (*or* me) hath been duly served according to the said Act.

Now, on proof here had before us [*or* me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or* occupier] of the said premises [*or* by the said *A. B.*], we, [*or* I], in pursuance of the said Act, do order the said owner [*or* occupier], [*or A. B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed* (*c*), *as, for instance,* to provide for the cleanly and wholesome keeping of, *or* to remove the animal kept so as to be a nuisance or injurious to health; *or, for further instance,* to cleanse, white-wash, purify, and disinfect the said dwelling-house; *or, for further instance,* to construct a privy *or* drain, *etc.*; *or, for further instance,* to cleanse *or* to cover *or* to fill up the said cesspool, *etc.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the court that the nuisance is likely to recur on the premises, say,* [And we] [*or* I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or* occupier, *or A. B.*], from [*here insert the matter of the prohibition, as, for instance*], from using the said house or building or human habitation until the same, in our [*or* my] judgment, is rendered fit for that purpose].

In case the nuisance were removed before complaint, say, Now, on proof here had before us [*or* me] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal we [*or* I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or* I] [*order on local authority to do works*].

Given under the hands and seals of us [*or* the hand and seal of me, *describing the court*].

This day of 18 .

J.S. (L.S.)
J.P. (L.S.)

(*a*) See s. 96, *ante*, p. 182.
(*b*) See s. 267, note (*f*), *ante*, p. 595.
(*c*) See s. 96, note (*c*), *ante*, p. 183. Note that the works required to be done must be specified in the order: see *R.* v. *Wheatley*, and other cases cited, *ante*, p. 184.

Where orders made by a court of summary jurisdiction for the abatement of a nuisance

were signed and sealed by one only of the justices present, it was held that the orders were bad (*Wing* v. *Epsom U. D. C.*, [1904] 1 K. B. 798; 68 J. P. 259), notwithstanding that the general forms prescribed by the Summary Jurisdiction Rules, 1886, showed a place for the signature of one justice only; but *quære* whether this decision now applies in view of the new Summary Jurisdiction Rules made under s. 40 of the Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58). In Ireland it has been held that a majority of the court should authenticate an order (*R.* v. *Londonderry JJ.*, [1910] 2 I. R. 458). As to the power to amend an invalid order, under s. 7 of 12 & 13 Vict. c. 45, on an appeal to sessions, or on the argument of a rule for a *certiorari* to quash, see *R.* v. *Tabrum* (1907), 97 L. T. 551; 71 J. P. 325; *R.* v. *Wood* (1918), 87 L. J. K. B. 913; 82 J. P. 268; *Smart* v. *Wilkins* (1919), 83 J. P. 181.

FORM D.

Form of Order for Abatement of Nuisance by Local Authority (a).

To the Town Council, *etc.* [*as the case may be*].

County, *etc.* to wit. } WHEREAS [*recite complaint of nuisance as in last form*].

And whereas it hath been now proved to our [*or* my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known *or* can be found [*as the case may be*]; Now we [*or* I], in pursuance of the said Act, do order the said [*local authority, naming it*] forthwith to [*here specify the works to be done*].

Given, *etc.* (*as in last form*).

(*a*) See s. 100, *ante*, p. 187.

FORM E.

Form of Order to permit Execution of Works by Owner (a).

County of [*or* borough, *etc.*], to wit. } WHEREAS complaint hath been made to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *etc.*] of by *A. B.*, owner, within the meaning of the Public Health Act, 1875, of certain premises [*describe situation of premises so as to identify them*], that *C. D.*, the occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said *C. D.* doth prevent the said *A. B.* from [*here describe the works generally, according to circumstances, for instance, thus:* constructing and laying down, in connection with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said *C. D.*, having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of 18 .

J. S. (L.S.)

(*a*) See s. 306, *ante*, p. 641.

FORM F (*a*).

Order of Justice for Admission of Officer of Local Authority.

WHEREAS [*describe the local authority*] have by their officer [*naming him*] made application to me, *A. B.*, one of her Majesty's justices of the peace having

Schedule 4. **Forms.**

jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose, as the case may be*], and that such demand has been refused.

Now, therefore, I, the said *A. B.*, do hereby require you [*name the person having custody of the premises*], to admit the said [*name the local authority*], [*or* the officer of the said *local authority*], to the said premises, for the purpose aforesaid.

Given, *etc.* [*as in last form*].

(*a*) See s. 102, *ante*, p. 188.

FORM G.

Form of Notice requiring Owner to Sewer, etc., Private Street (*a*).

To the owner of certain premises fronting, adjoining, or abutting on a certain street called within the district of [*describe the local authority*].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named [*local authority*]; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered levelled paved flagged and channelled: Now, therefore, the said [*local authority*], hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer level pave flag and channel the same within the space of [*state the time*] (*b*), from the date hereof, in manner following; (that is to say), the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [*local authority*].

Each gully for surface draining, and its connection with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the [*local authority*], situate in street in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said [*local authority*], or their surveyor.

Dated this day of 18 .

(Signed)

Clerk to the said [*local authority*].

(*a*) See s. 150, *ante*, p. 286, and s. 317, *ante*, p. 653. This form need not be followed precisely, but particulars of the work to be done must be given, and the deposited plans must be referred to (*Stourbridge U. D. C.* v. *Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3).

(*b*) See note (*hh*) to s. 150, *ante*, p. 303, and *Macclesfield Corporation* v. *Macclesfield Grammar School*, [1921] 2 Ch. 189, where RUSSELL, J., held that it was competent for a local authority to leave the time to be fixed by a competent official.

FORM H.

Form of Mortgage of Rates (*a*).

By virtue of the Public Health Act, 1875, we, the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by *A. B.* of for the purposes

of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said *A. B.*, his executors, administrators (*b*), and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of at [*place of payment*].

Dated this day of one thousand eight hundred and .

[*To be sealed with the common seal of the local authority*].

(*a*) See s. 236, *ante*, p. 533.

(*b*) Thus it appears that this mortgage is personal and not real property.

FORM I.

Form of Transfer of Mortgage (*a*).

I, *A. B.*, of , in consideration of the sum of paid to me by *C. D.*, of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, bearing date the day of , and made by the local authority, under the Public Health Act, 1875, for the district of for securing the sum of and interest thereon at per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns"* the within security] and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and .

A. B. (L.S.).

(*a*) See s. 238, *ante*, p. 534.

FORM K.

Form of Rent-charge (*a*).

By virtue of the Public Health Act, 1875, we, the being the local authority under that Act for the district of do hereby declare and absolutely order that the inheritance of the [dwelling-house shop lands and premises, *as the case may be*], situated in street, in the parish of within the said district, and now in the occupation of shall be absolutely charged with the sum of pounds, paid by of for the improvement by drainage and water supply (*as the case may be*] of the same dwelling-house shop lands and premises [*as the case may be*], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said his executors administrators or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises, to the said his executors administrators and assigns, in manner following; (that is to say,) the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the day of and the day of in every year, the first payment thereof to be made on the day of next, and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of in each of the next succeeding years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

[*To be sealed with the common seal of the local authority.*]

(*a*) See s. 240, *ante*, p. 536.

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Forms.

FORM L (*a*).

Register of Owners for the District of .

Notice of Time for making Claims and Objections.

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of , and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous to have their names inserted in the register about to be made for the said district, and all persons who are desirous of objecting to any name on the register now in force, are hereby required to give or send to me, on some one of the first six days of March next, a claim or objection [*as the case may be*], in the form hereunder set forth.

(Signed) ——
Chairman of the local board.

(*a*) This form is retained although it refers to the register to be kept under the repealed Sched. II., for the Forms of Claim are incorporated with Sched. III., r. 6, *ante*, p. 687.

Owner's Claim.

To the chairman of the local board for the district of .
This day of 18 .

I the undersigned claim to have my name inserted in the register of owners and proxies for the district of , pursuant to the provisions of the Public Health Act, 1875, as owner of the property hereinafter described which is situated in the parish of , that is to say: (*a*)

I also state that the interest or estate which I have in such property, and the amount of all the rent-service which I receive or pay in respect thereof, and the names of the persons from whom I receive or to whom I pay such rent-service are set forth in the form hereunder written.

Description of property (*b*)	In respect of which I have an estate or interest of (*c*)	And in respect of which I receive in rent-service the sum of (*d*)	From (*e*)	And in respect of which I pay in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

——Signature of claimant.
——Address (*h*) of claimant.

(*a*) Here insert a clear statement of the property, as "house," "building," "house and acres of land."

(*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and also whether it is held by the claimant solely, or jointly with others, and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(*d*) If the property is let by the owner, insert the amount of rent received from each tenant.*

(*e*) Insert name of tenant or tenants.

(*f*) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the owner's residence, but should be some address within the district.

* A partner must set out the amount of rent-service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself.

Claim of Proxy.

To the chairman of the local board for the district of .
This day of 18 .

I the undersigned having been appointed by of owner [*or* owners] of the property hereinafter described which is situated in the parish of to vote as his [*or* their] proxy pursuant to the provisions of the Public Health Act, 1875, claim to have my name inserted in the register of owners and proxies for the district of as such proxy.

I herewith transmit to you (*a*) the writing under the hand [*or* hands, *or in the case of a corporation*, the seal] of appointing me such proxy.

I also state that the interest or estate which has [*or* have] in such property and the amount of the rent-service which he [*or* they] receives or pays [*or* pay] in respect thereof, and the names of the persons from whom he [*or* they] receives [*or* receive] or to whom he [*or* they] pays [*or* pay] such rent-service are set forth in the form hereunder written.

Description of property (*b*)	In respect of which the appointor has an estate or interest of (*c*)	And in respect of which the appointor receives in rent-service the sum of (*d*)	From (*e*)	And in respect of which the appointor pays in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

—— Signature of proxy.
—— Address (*h*) of proxy.

(*a*) If the appointment itself is not sent, insert the words "an attested copy of."

(*b*) Describe the property by its name, situation, or the name of the occupier or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely, or jointly with others.

(*d*) If the property is let by the appointor, insert the amount of rent received from each tenant.

(*e*) Insert name of tenant or tenants.

(*f*) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the proxy's residence, but should be some address within the district.

The form of objection here following in the Act as passed is omitted because inapplicable under Sched. III., r. 6, *ante*, p. 687.

FORM M.

*Appointment of Proxy.**

To the chairman of the local board for the district of .
This day of 18 .

I [*or* We] the undersigned being the owner [*or* owners] of the property hereinafter described which is situated in the parish of do hereby appoint to vote as my [*or* our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [*or* we] hereby state that the description of the said property is as follows; viz. (*a*)

——Signature of owner (*b*).
——Address of owner.

——Witness.

* See the note to Form L., *ante*. This instrument must be stamped: see the note to r. 15, of Sched. II. *ante*, p. 679.

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(*a*) Describe the property by its name, situation, or the name of the occupier or any other designation by which it may be identified.

(*b*) Or of three directors; or in the case of a corporation *say*, Given under our common seal, *and add the name of the person or persons entitled to affix the seal.*

FORM N.

*Form of Voting Paper at Elections of Members of Local Boards.**

* * * * *

* This form is omitted as having now no application, though it is not actually repealed.

FORM O.

Form of Voting Paper for Poll taken under Schedule III.†

Voting Paper No. ( ).

At a meeting held on the day of , at , in the county of , it was agreed that the following resolution should be proposed to the owners and ratepayers of .

[*Set out the resolution.*]

——	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed)——
or the mark of ——
Witness to the mark ——
or proxy for ——

Directions to the Voter.

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address (*a*) at full length.

If the voter cannot write, he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address (*a*), and add after his signature the words "as proxy for," with the name of the body of persons (*a*) for whom he is proxy.

This paper will be collected on the of between the hours of and .

† See Sched. III., r. 6, *ante*, p. 687.

(*a*) The form seems to overlook the fact that a proxy may act for an individual as well as for a body of persons. See Sched. II., r. 15, *ante*, p. 679.

SCHEDULE V.

Schedule 5.

PART I. (a).

Part 1.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63 –	The Public Health Act, 1848 –	The whole Act.
14 & 15 Vict. c. 28 –	The Common Lodging Houses Act, 1851.	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41 –	The Common Lodging Houses Act, 1853.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116 –	The Diseases Prevention Act, 1855.	The whole Act, except so far as relates to the Metropolis.
18 & 19 Vict. c. 121 –	The Nuisances Removal Act for England, 1855.	The whole Act, except so far as relates to the Metropolis.
21 & 22 Vict. c. 98 –	The Local Government Act, 1858.	The whole Act.
23 & 24 Vict. c. 77 –	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the Metropolis.
24 & 25 Vict. c. 61 –	The Local Government Act (1858) Amendment Act, 1861.	The whole Act.
26 & 27 Vict. c. 17 –	The Local Government Act Amendment Act, 1863.	The whole Act.
26 & 27 Vict. c. 117 –	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act, except so far as relates to the Metropolis.
28 & 29 Vict. c. 75 –	The Sewage Utilization Act, 1865.	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41 –	The Nuisances Removal (No. 1) Act, 1866	The whole Act, except so far as relates to the Metropolis.
29 & 30 Vict. c. 90 –	The Sanitary Act, 1866 – –	Parts I., II., and III., except so far as relates to the Metropolis or to Scotland or Ireland.
30 & 31 Vict. c. 113 –	The Sewage Utilization Act, 1867.	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vict. c. 115 –	The Sanitary Act, 1868 – –	The whole Act, except so far as relates to the Metropolis.
32 & 33 Vict. c. 100 –	The Sanitary Loans Act, 1869 –	The whole Act, except so far as relates to the Metropolis.
33 & 34 Vict. c. 53 –	The Sanitary Act, 1870 – –	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79 –	The Public Health Act, 1872 –	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89 –	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolis or the Metropolitan Police District.

(a) This Part was repealed by the S. L. R. A. (No. 2), 1893.

Schedule 5. Part 1.

Of the above Acts, the following, (namely,) "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts" (*a*).

(*a*) This definition ought more properly to have been inserted in s. 4, *ante*, p. 3. It will be observed that the 37 & 38 Vict. c. 89, is not included in this definition, apparently through inadvertence.

All the above Acts, so far as they relate to the metropolis, have been repealed and consolidated by the P. H. (London) A., 1891.

PART II. (*a*).

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94 –	The Public Health Supplemental Act, 1849.	The whole Act, except—Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90 –	The Public Health Supplemental Act, 1850 (No. 2).	The whole Act, except—Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42 –	The First Public Health Supplemental Act, 1852.	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards, and section 13 (11 & 12 Vict. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act).

(*a*) This Part was repealed by the S. L. R. A., 1883.

PART III. (*a*).

11 & 12 Vict. c. 63, s. 83.

As to interments within churches.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment (*b*), shall for every such offence be liable to a penalty not exceeding fifty pounds (*c*), which may be recovered by any person (*d*), with full costs of suit, in an action of debt (*e*).

(*a*) In order to form a proper consolidation of the law, it was deemed necessary entirely to repeal all the statutes applicable to the general subject of sanitary law. But in some of these statutes were found certain provisions which could not be

introduced into the body of the Act, but which required to be kept in force. Accordingly those provisions are re-enacted in this Part of the Schedule.

(*b*) The judge of the Consistory Court of London has held that these words do not extend to the placing of a sealed urn containing the cremated ashes of a deceased person in the wall of a church (*In re Kerr* (1894), Times, June 9th).

(*c*) See, as to the recovery of this penalty, s. 251, *ante*, p. 551.

(*d*) That is, by any person, without the consent of the Attorney-General under s. 253. See the notes to that section, *ante*, p. 559, and *Fletcher* v. *Hudson*, there cited.

(*e*) The form of action here referred to is now abolished, but the right of action is not affected by more recent legislation relating to procedure.

21 & 22 Vict. c. 98, s. 49 (*a*).

Local board to be burial board in certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate (*b*).

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

(*a*) See also 29 & 30 Vict. c. 90, s. 44, *post*, p. 700, and the Burial Acts in App. I., *post*, Vol. II.

(*b*) Under the Burial Acts the poor rate was chargeable.

As to the liability of a burial board to be assessed to income tax in respect of surplus income, see *Paddington Burial Board* v. *Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 48 J. P. 311; *Edinburgh Southern Cemetery Co.* v. *Surveyor of Taxes* (1889), 17 Ct. of Sess. Cas. (4th ser.) 154; *Paisley Cemetery Co., Ltd.* v. *Reith* (1898), 25 Ct. of Sess. Cas. (4th ser.) 1080; and *cf. Sugden* v. *Leeds Corporation*, [1914] A. C. 483; 77 J. P. 225; *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381.

24 & 25 Vict. c. 61, s. 21.

Urban authorities may repair fences surrounding burial grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass byelaws (subject to the provisions of this Act) (*a*) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates (*b*) authorised to be levied by any urban authority constituted a burial board.

(*a*) See s. 182, *ante*, p. 432.

(*b*) That is, as a general rule, out of the district rate or poor rate, according to circumstances.

26 & 27 Vict. c. 17, s. 6.

Local government districts to be within highway districts for purpose of highway meetings.

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.

This enactment is now obsolete.

Schedule 5.

Part 3.

Power to burial boards in certain cases to transfer their powers to urban authority.

29 & 30 Vict. c. 90, s. 44.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities, and from and after such transfer, the urban authority shall have all such estate property rights powers duties and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

34 & 35 Vict. c. 33, s. 2, enacted that "This Act shall be construed as one with *the Acts mentioned in the Schedule to this Act, and those Acts and this Act may be cited together as* the Burial Acts, 1852 to 1871, *and each of them may be cited as the Burial Act of the year in which it was passed.*" The Schedule set forth the following Acts and their titles: 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100. The Short Titles Act, 1892, s. 1 (2), provides that the foregoing Acts, together with 34 & 35 Vict. c. 33; 43 & 44 Vict. c. 41; 44 & 45 Vict. c. 2; 48 & 49 Vict. c. 21, may be cited by the collective title of the Burial Acts, 1852 to 1885; and part of s. 2 of the 34 & 35 Vict. c. 33, together with the Schedule, was accordingly repealed by the S. L. R. A. (No. 2), 1893. In addition to the Acts above mentioned, see also the Burial Act, 1900. It is impossible to include all these Acts in the present volume, but some of the provisions more directly affecting sanitary authorities will be found in App. I., *post*, Vol. II. As to the powers of urban district councils to act as burial boards under local Acts, see the Burial Act, 1855, ss. 19, 20. On the subject of the Burial Acts, reference should be made to Brooke Little's "Law of Burials."

[Here followed 29 & 30 Vict. c. 90, ss. 51 and 52, which are now repealed by the Public Health Act, 1896, ss. 6 and 7, *post*.]

35 & 36 Vict. c. 76, s. 34.

As to consent of Local Government Board required in certain cases.

Where in any local Acts the consent, sanction, or confirmation of one of her Majesty's principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any byelaws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts (*a*).

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such questions shall be conclusive.

This provision is extended to London by 54 & 55 Vict. c. 76, s. 142. The Local Authorities (Treasury Powers) Act, 1906, s. 1, provided that the L. G. Board should exercise any power conferred on the Treasury by any enactment contained in, applied by, or incorporated with the Baths and Wash-houses Acts, 1846 to 1899, or any local or private Act, as respects dealings with property, loans, and matters connected therewith, and any such power, if exercised before the passing of that Act, whether by the Treasury or by the L. G. B., was to be deemed to have been duly exercised. The L. G. B. have now been succeeded by the M. of H.

(*a*) See the definition of these Acts in s. 4, *ante*, p. 35. The Acts themselves will be found in App. I., *post*, Vol. II.

35 & 36 Vict. c. 79, s. 35.

Transfer to Local Government

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same (*a*), and under the Metropolis

Water Acts, 1852 and 1871 (*b*), shall be exercisable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

This provision is extended to London by 54 & 55 Vict. c. 76, s. 142.

(*a*) The Alkali Act, 1863, and the Acts amending the same (26 & 27 Vict. c. 124; 31 & 32 Vict. c. 36; 37 & 38 Vict. c. 43) were repealed by the Alkali, etc. Works Regulation Act, 1881. The last mentioned Act and the Alkali, etc. Works Regulation Act, 1892, have now been replaced by the Alkali, etc. Works Regulation Act, 1906, in App. I., *post*, Vol. II., which imposes upon sanitary authorities important duties with respect to alkali works. These powers are now exercised by the M. of H.

(*b*) See 15 & 16 Vict. c. 84; 34 & 35 Vict. c. 113. See also 60 & 61 Vict. c. 56; 62 Vict. c. 7; 2 Edw. 7, c. 41.

35 & 36 Vict. c. 79, s. 36.

Transfer to Local Government Board of powers and duties of Secretary of State under Highway and Turnpike Acts.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

This provision is extended to London by 54 & 55 Vict. c. 76, s. 142. These powers are now exercised by the Minister of Transport (see Ministry of Transport Act, 1919).

35 & 36 Vict. c. 79, s. 37.

Transfer of officers to Local Government Board.

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872 (*a*), attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by Order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

(*a*) 34 & 35 Vict. c. 70, transferred certain powers to the L. G. B. and at the same time placed the officers of departments previously engaged therein under the control of the new board. 35 & 36 Vict. c. 79, transferred other powers, and in s. 37 made a similar provision as to the officers engaged therein. 34 & 35 Vict. c. 70, remains unrepealed (see the Act in App. I., *post*, Vol. II.); but as 35 & 36 Vict. c. 79, is wholly repealed, s. 37 is here re-enacted. These officers, etc., were transferred to the Ministry of Health by 9 & 10 Geo. 5, c. 21, s. 6.

35 & 36 Vict. c. 79, s. 38.

Salary of medical officer of Local Government Board.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasury may from time to time determine.

See, as to the appointment of this officer, 21 & 22 Vict. c. 97, s. 4; but note that that section is repealed by the S. L. R. A., 1875, so far as relates to his salary.

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35 & 36 Vict. c. 79, s. 48.

Part 3. Orders of Local Government Board: how to be published.

Every General Order of the Local Government Board, made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, shall be published in the London Gazette, and when so published shall take effect in like manner, and shall be of as much force and validity as any General Order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single Order of the said Board, made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

See upon this section, which refers to Orders relating to the relief of the poor, 4 & 5 Will. 4, c. 76, ss. 16—18; 10 & 11 Vict. c. 109, ss. 14, 17; 31 & 32 Vict. c. 122, ss. 1, 2.

And as to the publication of the Orders and their admissibility as evidence, see s. 135, *ante*, p. 247, and the note to that section.

The powers of the Local Government Board are now transferred to the Ministry of Health. See 9 & 10 Geo. 5, c. 21, s. 3 (1), *post*.

THE PUBLIC HEALTH (WATER) ACT, 1878.

(41 & 42 Vict. c. 25.)

An Act to amend the Public Health Act, 1875, so far as relates to the supply of water. [4th July 1878.]

Whereas it is expedient to amend the provisions of the Public Health Act, 1875:

This preamble is repealed by the S. L. R. A., 1894.

Short title and construction.

1. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875.

Commencement of Act.

2. *This Act shall come into operation on the twenty-fifth day of March, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.*

This section is repealed by the S. L. R. A., 1894.

Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.

3. It shall be the duty of every rural sanitary authority (*a*), regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes (*b*) of the inmates of the house.

Where it appears to a rural sanitary authority, on the report of their inspector of nuisances, or their medical officer of health, that any occupied dwelling-house within their district has not such supply within a reasonable distance (*c*), and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capita

sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the local authority determine under all the circumstances of the case to be reasonable (*d*), and that the expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses (*e*), proceedings may be taken as follows :

(1) The authority may serve on the owner (*f*) of the house a notice requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose (*g*) :

(2) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the owner a second notice (*f*), informing him that if the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of providing the supply will in that case be payable by the owner or as a private improvement expense (*e*) :

(3) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house ; and for the purposes of such entry sections one hundred and two and one hundred and three of the Public Health Act, 1875 (*h*), shall apply until the works are completed, in the same manner as if an order of a court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with :

(4) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house (*i*), or may, at the option of the authority, be declared, by their order, to be private improvement expenses (*e*) :

(5) Where the owners of two or more houses have failed to comply with the requirements of the notices served on them under this section, and the authority might, under this Act, execute the necessary works for providing a water supply for each house (*k*), the authority may, if it appears to them desirable, and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as they deem just.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should

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not be complied with (*l*), withdraw the notice or modify the requirements thereof.

Provided, that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost (*m*).

Urban districts.

(*a*) Note that this applies to a rural authority only. But an urban authority may obtain the power of a rural authority under s. 11, *post*, p. 709. See also the notes to that section.

Effect of section.

The provisions of this Act do not repeal s. 62 of the P. H. A., 1875, *ante*, p. 137 (*Colne Valley Waterworks Co.* v. *Treharne* (1884), 50 L. T. 617; 48 J. P. 279). A notice may still be given, therefore, under that section.

The L. G. B. (now the Ministry of Health) state that they are advised that this section is intended to meet cases where the required supply has to be provided by means of the expenditure of a capital sum in the construction of separate works of water supply, and not to cases where mains are to be laid in the district, and where, therefore, the appropriate remedy for defect in the water supply for premises appears to be the substitution of water from such mains. In such circumstances the district council should have recourse to the powers conferred upon them by s. 62 of the P. H. A., 1875, under which the council may require houses to be supplied with water in certain cases.

"Domestic purposes."

(*b*) As to what are *domestic* purposes, see the Waterworks Clauses Act, 1847. s. 53, and the Waterworks Clauses Act, 1863, s. 12, in App. I., *post*, Vol. II.

"Reasonable distance."

(*c*) Neither the L. G. B. nor their successors have fixed upon any distance which is to be considered as reasonable within the meaning of the section. The point is one to be determined in the first instance by the local authority on the report of their medical officer of health or inspector of nuisances. The Board, however, expressed the opinion generally that in determining the distance to be considered as reasonable, regard must be had to the labour involved in carrying by hand a sufficient amount of water for the purpose of an ordinary household and to the injurious results as regards cleanliness and health which are likely to arise if, in order to avoid this labour, the water used is stinted, or impure water more easily obtained is substituted for that which is purer but more distant.

"Reasonable cost."

(*d*) The meaning of this appears to be that when a house has not a sufficient supply of wholesome water, the rural authority may proceed under the following part of the section, provided the cost of providing a sufficient supply, *i.e.*, of executing the works necessary for the supply, does not exceed £8 13*s.* 4*d.* If the costs would exceed that sum, the rural authority must apply to the M. of H. to determine what is a reasonable sum, not exceeding £13 in any case. Compare with this the P. H. A., 1875, s. 62, *ante*, p. 137. The limit under the text does not apply to s. 62 (*West Lancashire R. D. C.* v. *Ogilvy*, [1899] 1 Q. B. 377; 63 J. P. 166).

The limit of cost here laid down at which water supply to houses may be enforced by rural councils must be taken as referring to each individual house, and when the cost of providing any house considered individually would exceed the limit, the council cannot require a supply to be obtained under this section even if it appears that the cost of a supply for two or more houses would, if distributed over those houses, be within the specified limit.

(*e*) See the Act of 1875, s. 213, *ante*, p. 493.

(*f*) See the definition of *owner*, *ante*, p. 8. As to the service of the notice, see the Act of 1875, ss. 266, 267, *ante*, p. 593. For forms of notices, see the Schedule to this Act.

(*g*) These words may require the rural authority to specify the particular works they may think necessary: see the note to similar words as used in the Act of 1875, s. 96, *ante*, p. 183; but see Form A. in the Schedule to this Act. See also note (*a*).

(*h*) *Ante*, pp. 188, 189. No order is necessary to justify this entry, although if admission were refused a justice's order would have to be obtained.

Note to Section 3.

(*i*) As to the recovery of these expenses, see the P. H. A., 1875, s. 251, *ante*, p. 551.

(*k*) Note the words "for each house." The previous provisions of the section must, therefore, have been complied with in respect of each house, considered separately. See also note (*d*).

(*l*) Cause may be shown in the memorial mentioned in the next section, or the owner may be heard personally by the local authority.

(*m*) See as to the consequences of default in the performance of this duty, the P. H. A., 1875, s. 299, and notes thereto, *ante*, p. 632. See also the L. G. A., 1894, ss. 16, 19 (8).

Appeal by owner against requirement to provide water supply.

4. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and objects to such requirement on any of the following grounds; (that is to say,)

(1) That the supply is not required; or,

(2) That the time limited by the notice for providing the supply is insufficient; or,

(3) That it is impracticable to provide the supply at a reasonable cost (*a*); or,

(4) That the authority ought themselves to provide a supply of water for the district or contributory place (*b*) in which the house is situate, or to render the existing supply of water wholesome; or,

(5) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be charged on the district or contributory place;

he may, within twenty-one days after service on him of the second notice, address a memorial (*c*) to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they might otherwise execute under this Act until they have been authorised to execute the same by a court of summary jurisdiction (*d*) or by the Local Government Board in manner hereinafter provided.

If the objections stated in the memorial do not include either the fourth or fifth of the above-mentioned grounds, the authority may apply to a court of summary jurisdiction (*d*) for an order authorising them to proceed with the works; and thereupon the court shall summon the owner, and, if satisfied on hearing the case that the objections are not well founded, shall make an order authorising the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order (*e*).

If the objections stated in the memorial are or include the fourth and fifth of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the Local Government Board, who may either cancel the requirement of the authority, or confirm the same, with or without modifications (*f*).

If the Local Government Board confirm the requirement they shall issue an order (*g*) authorising the authority, subject to such modifications (if any) as they prescribe, to execute the works in the event of such

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works not being executed by the owner within a time limited by the order.

Any such order (*f*) may, if the Local Government Board think it equitable so to do, apportion the expense of providing the supply between the owner of the house and the authority of the district comprising the contributory place (*b*) in which the house is situate, or between the owner and any other person or persons.

If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a complaint of default made to the Local Government Board against the authority under the two hundred and ninety-ninth section of the Public Health Act, 1875 (*h*).

The reference to the L. G. B. must now be read as a reference to the Minister of Health. See 9 & 10 Geo. 5, c. 21, s. 3.

(*a*) This means apparently that the supply cannot be provided without the expenditure of a sum greater than the maximum fixed by the last section.

(*b*) As to what is a contributory place, see s. 229, *ante*, p. 510.

(*c*) No form is prescribed for this memorial. It should, however, be carefully drawn up, and should, in fact, follow the words of this section as nearly as possible. It is not necessary to state evidence in support of the objections.

(*d*) See the definition, *ante*, p. 36.

(*e*) Note that the order does not require the owner to execute the works unless he chooses, and that it merely authorises the rural authority to do so.

(*f*) No provision is made for the hearing of the case by the M. of H. They may direct an inquiry under the P. H. A., 1875, s. 293, *ante*, p. 626.

The Ministry require in such cases to be supplied by the rural council with (a) copies of the notices served, (b) copy of the report of the inspector of nuisances or medical officer of health, (c) an estimate showing, as regards each house, without regard to any other houses which might be furnished with a supply at the same time, that the supply can be furnished within the cost limited by s. 3, and (d) the observations of the council upon the memorial of objection.

The functions of the Ministry under this section appear to be of a judicial or quasi-judicial character, similar to their functions on appeals under s. 268, *ante*, p. 595, or under the Housing Acts: see on the point, *R.* v. *Local Government Board*, *ante*, p. 598.

(*g*) This order will be conclusive as to the power of the local authority to execute the works, and as to the apportionment of the expenses. See the P. H. A., 1875, s. 295, *ante* p. 627. Note that this order, however, like that of the court of summary jurisdiction above mentioned, merely *authorises* the rural authority to execute the works.

(*h*) See this section, *ante*, p. 632.

Appeal against apportionment of expenses.

5. Where the expenses of providing a joint supply of water for two or more houses are apportioned under this Act (*a*) by a rural sanitary authority among the owners of the several houses, notice of such apportionment (*b*) shall be forthwith given to each of such owners; and if any owner objects to the apportionment as unjust, he may, within twenty-one days after service on him of notice thereof, apply to a justice, and thereupon the justice may summon the authority, and also the other owners, to show cause before a court of summary jurisdiction (*c*) why the apportionment should not be varied, and the court

may either dismiss the application or make such order varying the apportionment as to the court may appear reasonable (*d*). Section 5.

(*a*) That is, under s. 3 (5), *supra*.

(*b*) As to service, see the P. H. A., 1875, ss. 266, 267, *ante*, p. 593.

(*c*) See the definition, *ante*, p. 36. Any one justice may issue the summons, but the hearing must be before a court of two or more justices, or a stipendiary magistrate.

(*d*) This order may be appealed from under the P. H. A., 1875, s. 269, *ante*, p. 599.

Houses in rural districts not to be erected or rebuilt without sufficient water supply.

6. It shall not be lawful in any rural district of the owner of any dwelling-house which may be erected after the date of the commencement of this Act, or of any dwelling-house which after that date may be pulled down to or below the ground floor and rebuilt, to occupy the same, or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a certificate that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house (*a*).

If the sanitary authority refuse to grant such certificate, the owner may apply to a court of summary jurisdiction for an order authorising the occupation of the house notwithstanding the refusal of the certificate, and thereupon the court shall summon the authority, and if the court, after hearing the case, is of opinion that the certificate ought to have been granted, the court may make an order authorising the occupation of the house (*b*).

Any owner (*c*) who occupies a house or causes or permits it to be occupied in contravention of this section shall be liable on conviction by a court of summary jurisdiction to a penalty not exceeding ten pounds (*d*).

(*a*) The effect of this section (which should be compared with the P. H. A., 1875, s. 62, *ante*, p. 137, which applies to all houses, whether old or new) is to prevent the occupation of any *new* house in a rural district until it has been properly supplied with water.

Duty of medical officer.

With regard to the reports required with a view to granting certificates under this section, the L. G. B. stated that they were advised that local authorities were empowered to call upon their medical officers of health to make such reports, and, unless the terms of appointment of the officer provided for his receiving remuneration in addition to his salary for such reports, the Board considered that his services in this respect must be regarded as covered by his salary.

Analysis of water.

In reply to an inquiry as to whether a rural council are justified in charging applicants for a certificate with the cost of the analysis made before granting the certificate, the Board pointed out that the section requires the local authority to found their decision on the report of their inspector of nuisances or medical officer; if for their own satisfaction they required a report from someone else, *e.g.*, from an analytical chemist, it appeared to the Board that there was no legal authority which would enable them to require the owner of a house to pay for it.

(*b*) For the definition of a court of summary jurisdiction, see *ante*, p. 36. This clause gives the owner an appeal to the court. There is a further appeal to quarter sessions under s. 269, *ante*, p. 599, against the determination of the court whether the order is made or refused.

(*c*) See the definition, *ante*, p. 8.

Note to Section 6.

(*d*) For the recovery of this penalty, see the P. H. A., 1875, s. 251, *ante*, p. 551 and see s. 253, *ante*, p. 559.

An owner who gives the keys to his tenants with permission to put their furniture in, but not to reside themselves till the certificate has been obtained, commits a technical breach of the statute (*Downie* v. *Fraser* (1901), 3 F. 1044; *cf. Gowen* v *Sedgwick* on p. 347, *ante*).

Periodical inspection of water supply.

7. It shall be the duty of every rural sanitary authority from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorised in writing for that purpose by the authority, if they or he have or has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water sufficient for the consumption and use for domestic purposes (*a*) of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance; and for the purposes of any such admission sections one hundred and two and one hundred and three of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorised as aforesaid were an officer of the rural sanitary authority (*b*).

(*a*) See the note to these words as used in the Waterworks Clauses Act, 1847, s. 53, in App. I., *post*, Vol. II.

(*b*) See these sections, *ante*, pp. 188, 189. Note that the officer or other person cannot effect an entry by force. If admission is denied him he must obtain a justice's order.

Under this section a Rural District Council have greater powers of entry than an urban council have under the P. H. A. 1875. But an urban council may obtain powers under this section; see s. 11, *post*, p. 709.

Explanation of 38 & 39 Vict. c. 55, s. 62, as to meaning of "reasonable cost."

8. Where application is made to the Local Government Board by a local authority under section sixty-two of the Public Health Act, 1875 (*a*), to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges (*b*).

(*a*) See this section and notes thereto, *ante*, p. 137.

(*b*) Many orders are annually made by the Ministry of Health under the combined sections. The charges fixed apply only to cases of compulsory supply of water to premises, though the authorised scale is frequently adopted for purposes of general water rate.

Rating for water supply by stand-pipes.

9. Where a rural sanitary authority have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district, they may recover water rates or water rents (*a*) from the owner or occupier

of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the house (*b*).

(*a*) Water *rates* are made under the P. H. A., 1875, s. 56, *ante*, p. 129. Water *rents* are payments made to the authority under agreements between them and the consumer. See s. 56, note (*a*), *ante*, p. 129.

(*b*) Primâ facie water rates will be payable in respect of every house within 200 feet of a stand-pipe. But payment cannot be enforced if the person charged can show that he is within the proviso.

Where the appellants were authorised by their incorporating Act to make byelaws levying a water rate "in respect of lands and tenements distant not more than sixty yards from any main, . . . although such lands or premises are not actually connected with any main," it was held that they had no authority to levy a rate on lands without the prescribed limit, merely because such lands formed one holding with other lands within the prescribed limit (*Hunter District Water Supply and Sewerage Board* v. *Newcastle Wallsend Coal Co.*, [1896] A. C. 82).

Power to require water rates to be levied. 38 & 39 Vict. c. 55.

10. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district (*a*) or in any contributory place (*a*), and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place (*b*).

(*a*) As to what is an urban district, see the P. H. A., 1875, s. 6, *ante*, p. 37, and as to what is a contributory place, see *ibid.*, s. 229, *ante*, p. 510.

(*b*) The effect of this is to transfer all or part of the expense of the water supply from the entire urban district or contributory place to the consumers. The default of the local authority in complying with this section is not provided for. The proper remedy is probably by *mandamus*. See notes to s. 56 of the Act of 1875, p. 129, *ante* : *semble*, it is for the authority to decide whether to charge by rates or by rents. It will be observed that the amount of the rates or rents is left to the discretion of the authority.

Powers of urban sanitary authorities in certain cases.

11. The Local Government Board may, if they think fit by Order (*a*) invest any urban sanitary authority with all or any of the powers and duties which are by this Act given to a rural sanitary authority and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised (*b*).

(*a*) This Order will be conclusive. See s. 295, *ante*, p. 627.

(*b*) It has been suggested that this section does not enable the Board (now the Minister of Health) to apply certain of the provisions of the Act to urban districts.

Note to Section 11.

Thus, under s. 6 a *duty* is imposed on owners of certain dwelling-houses in rural districts, and the Board have expressed some doubt whether, if an urban council were invested with the *powers* of the section, the effect would be to impose on owners in the urban district the duty in question.

In connection with an application from an urban council to be invested with the powers of ss. 3—5, the Ministry require to be informed if the council have considered whether the individual supplies of wholesome water which they may require to be enforced can be provided at the reasonable cost defined by the Act, or whether the need of water could not be better met by schemes of public supply.

In the case of s. 7 specific evidence is required by the Ministry that the powers of the P. H. A., 1875, ss. 62, 70, have been found insufficient in practice. In the case of s. 9 a statement of grounds is required in support of the opinion that a supply of water by stand-pipes in the district is desirable and satisfactory. The Ministry also require to know the position of the houses it is proposed to supply by stand-pipes, and their distance from water mains and stand-pipes respectively.

Forms in Schedule.

12. The forms contained in the Schedule to this Act, or forms to like effect varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

Cf. note to the P. H. A., 1875, s. 317, p. 653, *ante*.

Powers of Act cumulative.

13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom.

Compare s. 341 of the P. H. A., 1875, *ante*, p. 666.

THE SCHEDULE.

Section 12.

FORM (A).

Form of Notice requiring Owner to provide a Supply of Water for an Occupied House.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost: and whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of 18 .

(Signed)

Clerk to the said [*local authority*].

FORM (B). Schedule.

Form of Second Notice to be served where Requirements of First Notice have not been complied with. Section 12.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to indentify the premises*] within the district of [*describe the local authority*].

Whereas on the day of the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice bearing date the day of requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice:

And whereas the said notice has not been complied with: Now, therefore, we, the said [*local authority*], do hereby give you notice that if the requirements of the said first notice dated the day of are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily or be recovered as private improvement expenses.

Dated this day of 18 .

(Signed)
Clerk to the said [*local authority*].

THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 VICT. c. 31.)

An Act to amend the Public Health Act, 1875, as to Interments.

[21st July 1879.]

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act. Short title and construction. 38 & 39 Vict. c. 55.

2.—(1) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery. The provisions of 38 & 39 Vict. c. 55, extended to cemeteries.

(2) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district. 38 & 39 Vict. c. 55, ss. 32—34.

(3) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The provisions of the principal Act here referred to are ss. 141—143, *ante*, pp. 249—253. The text, therefore, enables the local authority to provide and fit up a cemetery, and they must do so if the L. G. B. (now the Ministry of Health) so require. They may also make byelaws with respect to its management and charges for the use thereof.

Note to Section 2.

On August 19th, 1879, the L. G. B. issued a circular letter in which the duties and powers of local authorities are clearly set forth: and the following are extracts from such letter (with added references to the provisions of the Burial Act, 1900, the text of which with notes is set out in App. I., *post*, Vol. II., and other Acts):

Circumstances under which cemetery should be provided.

"The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them.

"The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action:

"1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided;

"2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;

"3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place, or within certain limits.

"There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow."

* * * * * *

Incidence of cost.

"In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

"If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district [now see the L. G. A., 1894, s. 36], or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee [and to a parish council (see L. G. A., 1894, s. 15)] the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place."

* * * * * *

Regulation of cemetery.

"With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of s. 141 of the Public Health Act, 1875, will enable the sanitary authority to make byelaws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein. [As to fees, however, reference should now be made to s. 3 of the Burial Act, 1900.]

"It should be borne in mind, however, that such byelaws must be made in conformity with the Public Health Act, and be confirmed by the central authority;

Note to Section 2.

and the President contemplates that the department should hereafter frame a series of model byelaws to be recommended for adoption. [See Mackenzie and Handford's Model Byelaws, Vol. I., p. 489.]

"In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847.

"That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some general and several local improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

"The President, therefore, thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exercisable by them under the incorporated enactments.

"*With respect to the Making of the Cemetery.*

"The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier. [Reduced to 100 yards by the Burial Act, 1906.]

"The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery. [As to chapels, special provision is further made by the Burial Act, 1900, s. 2.]

"*The cemetery must be enclosed by substantial walls, or iron railings, of the height of eight feet at least.* [But the application of this provision to cemeteries provided under the Public Health (Interments) Act, 1879, is now repealed by the Burial Act, 1900, s. 10.]

"The sanitary authority must keep the cemetery, and the buildings and fences thereof, in complete repair and in good order and condition.

"*With respect to Burials.*

"The sanitary authority may set apart a portion of the cemetery for burials according to the rights of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart. [See also s. 1 of the Burial Act, 1900.]

"A chapel, to be approved by the Bishop, must be built on the consecrated part for the performance of the burial service of the Established Church. [See also as to other chapels, s. 2 of the Burial Act, 1900.]

"A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

"The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church [see also the Burial Act, 1900, ss. 6 and 9], and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church. [See also the Burial Act, 1900, s. 2.]

"*With respect to exclusive rights of Burial and Monumental Inscriptions.*

"The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

"It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country

Note to Section 2.

where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

"The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the legislature."

A memorandum as to the sanitary requirements of cemeteries has been issued by the L. G. B. A copy will be found in App. II., *post*, Vol. II.

Loans for cemeteries: Practice of the M. of H.

When the L. G. B. (now the Ministry of Health) are asked to sanction a loan for the provision of a cemetery under this Act, the following documents and particulars seem to be required:

(1) A copy of a resolution of the local authority authorising application to be made for sanction to a loan.

(2) A plan of the site, drawn to scale, having the position of the trial holes marked upon it.

(3) A key plan showing the locality of the site, its situation with regard to adjoining properties and the points of the compass, and the means of access to the ground and the position of any sources of domestic water supply near the site.

(4) Plans, sections and detailed estimates of the cost of all the proposed works.

(5) Financial particulars of the district (in a form supplied).

(6) A report by the medical officer of health on the suitability of the proposed site. The question of the freedom from risk of contaminating sources of domestic water supply, and of nuisance from the disposal of drainage water should receive consideration in this report.

(7) The area and precise locality of the proposed ground.

(8) Whether any part of the proposed burial ground is outside the district, and, if so, the names of the civil parish and sanitary district. Proofs similar to those required by the Board in the case of sewage works beyond district (see note to the P. H. A., 1875, s. 32), should also be supplied of the due observance of the requirements of s. 2 (2) of this Act.

(9) The average annual number of burials in the district for ten years.

(10) Whether an Order in Council has been issued prohibiting the opening of a new burial ground in the parish in which the site is situate without the consent of the Secretary of State or the Board (now the Ministry of Health). If so, a reference to it. [A local authority are frequently unable to answer this question, and the department is willing to direct a search of the records.]

(11) The distance of the site from—

(a) the nearest inhabited part of the district;

(b) the remotest part of such district;

(c) the most densely populated part of the district.

(12)—(a) Whether there are any, and if so, how many, dwellings within 100 yards of the site.

(b) Whether the consents in writing of the owners, lessees and occupiers of such dwellings have been obtained.

(13) Whether there are any sources of domestic water supply near the site. If so, a description of these sources and a statement of the distance in each case from the site.

(14) The nature of the soil as ascertained by trial holes at least eight feet deep. (The holes should preferably be sunk near each corner and the centre, and in other parts of the ground.)

(15) Whether the soil is free from water to a depth of eight feet.

If not—

(a) the depth at which water is met with;

(b) what means are available for the drainage of the subsoil to the depth of eight feet and for the disposal of the resulting water.

(16) Whether an agreement (subject to the approval of the Ministry being obtained) has been entered into for the purchase of the site.

(17) The price to be paid for the land.

The terms allowed by the Board for the repayment of loans for cemetery purposes are:—

	Maximum	Note to Section 2.
For land	60 years.	
„ building and drainage works	30 „	
„ laying out and planting	20 „	
„ fencing and gates	15—20 „	

Control of the Ministry.

It will be seen that the Ministry must be approached upon the subject of the provision or extension of a cemetery under the Act (a) if a loan is proposed, (b) if compulsory powers of purchase are required, (c) if the cemetery is to be situate beyond the district, and a statutory objection has been made, or (d) if there is an Order in Council in force prohibiting the opening of a new burial ground in the parish without the previous approval of the central department. If none of these conditions apply to the proposals of a local authority, they are at liberty to proceed without consulting the Ministry. A rural district council providing a cemetery should obtain a special expenses order under the P. H. A., 1875, s. 229, even if no loan is proposed.

Where it was proposed to purchase copyhold land for use as a burial ground, the L. G. B. required, as a condition precedent to loan sanction being given, that provision should be made for its enfranchisement, and they suggested that this should be arranged with the vendor as part of the condition of purchase and sale.

Advantages of proceeding under this Act.

Inquiry was made of the Board as to the provision of a new burial ground for an ecclesiastical parish consisting of two rural parishes, one of which had not a parish council. The Board stated that if it were desired to provide and maintain a joint burial ground under the Burial Acts for the two civil parishes, the appointment of a joint committee under the L. G. A., 1894, s. 57, would be necessary, and that before this could be done the parish meeting of the parish without a council would have to obtain from the county council an order investing them with the requisite powers of a parish council. Other formalities would be involved by procedure under the Burial Acts. There would first have to be resolutions of the parish council and of the parish meeting of the respective parishes under the Burial Act, 1852, s. 23, expressing concurrence and agreement in providing a joint burial ground and apportioning the expenses. Following this, resolutions of the parish meeting of each parish under s. 19 of that Act, authorising the expenditure, would be necessary; and, after the joint committee had been formed, further resolutions of the parish meetings of the respective parishes under s. 26 of the same Act would have to be passed approving of the contract for the acquisition of the site. As, therefore, procedure under the Burial Acts would involve considerable delay and trouble, the Board suggested that probably the preferable course would be for the rural district council to provide a cemetery for the parishes under the present Act. The Board observed that if proceedings were taken under this Act, the involved procedure under the Burial Acts would be avoided, and there would be no necessity for conferring upon the parish meeting parish council powers, the rural district council having, in fact, all the necessary powers for providing a cemetery for the joint use of any group of parishes within their district. Again, if a loan were required, the only consent necessary under this Act as regards the loan, would be that of the L. G. B.; whereas a loan for a burial ground provided under the Burial Acts would require the consent of the parish meeting of each parish, of the county council, and of the Board. In conclusion, the Board suggested that the matter should be brought before the rural district council with a view to action by them under this Act.

An urban district council may provide a cemetery under this Act even if they are a burial authority under the Burial Acts, and, as in the case of rural areas (see note above), there are certain advantages in their doing so. Thus, under this Act, a term of sixty years is obtainable for the repayment of a loan for the purchase of land, thirty years being (see "Local Government," 1910, p. 97), the maximum under the Burial Acts; compulsory powers also are obtainable (the P. H. A., 1875, s. 176, being applicable): and the consent of the vestry to the proposed expenditure and site is dispensed with. It may be added that an urban council may effect an extension of a burial ground vested in them under the Burial Acts by proceeding under the Act of 1879. Though the two grounds will strictly be separate burial grounds subject to different statutes.

Note to Section 2.

If an urban council proceeding under this Act wish to limit the incidence of expenses to part of the district, they may do so under the P. H. A., 1875, s. 211.

Model byelaws.

Model byelaws for cemeteries have been issued. [See Mackenzie and Handford, Vol. I., p. 489.] The accompanying memorandum says:

"The combined effect of the enactments in s. 141 of the Public Health Act, 1875, and in s. 2 (1) of the Public Health (Interments) Act, 1879, is to enable a local authority to make byelaws with respect to the management and charges for use of a cemetery provided under the latter Act. It is, however, to be observed that this power of making byelaws is only one of several means which the local authority may employ for the proper control of their cemetery. For example, s. 37 of the Cemeteries Clauses Act, 1847, which is incorporated with the Act of 1879, enables the local authority to appoint gravediggers and other servants necessary for the care and use of the cemetery. Where a gravedigger is appointed by the local authority, they may conveniently dispense with many regulations which might otherwise require to be embodied in byelaws. It may be assumed that, as a servant of the local authority, the gravedigger will act in strict accordance with their directions as to such matters as the appointment of grave spaces, the dimension of graves, and their separation by a sufficient thickness of undisturbed earth. These subjects may accordingly be regarded as outside the range of such byelaws as will ordinarily be needed. At the same time it is important, for the reasons which are explained in the accompanying memorandum, that the local authority should give definite instructions to their servants as to the manner in which their duties are to be discharged.

"The Board desire me to add that local authorities who may intend to adopt the model clauses as the basis of their byelaws will, on application to the Board, be furnished with copies of those clauses, on foolscap paper, with a margin for annotations. These draft forms should be used in accordance with the instructions in the Circular of July 25th, 1877."

In the preface to a reprint of the model in April, 1907, the Board remarked:

"The opportunity has been taken to revise the series in regard to certain requirements which have sometimes been found irksome in practice, and may in the Board's opinion be omitted or modified without danger to the public health. Thus the clause (No. 3 in former editions) which forbade the burial in one grave at one time of more than one body unless the deceased were members of the same family, has been omitted, this being a matter which may be left to the local authority to determine in view of the sentiments of the inhabitants, and the customs prevailing in the district. The clauses forbidding the reopening of a grave, except for the interment of another member of the same family, until after the expiration of a term of years, have been replaced by one forbidding, on the reopening of any grave, the disturbance of any human remains already interred therein, or any soil which is offensive. Reductions have been made as regards the thickness of the layer of earth required between one coffin and another in a grave, and of the cover of earth above the topmost coffin; these, by enabling more coffins to be placed in a grave, will prolong the period for which the cemetery will remain available. A proviso allowing a less depth of cover in certain cases has been added which may be adopted by local authorities who desire to promote what is termed the 'earth-to-earth' system of burial.

"In the clause prescribing fees for the use of the cemetery the same fee shall be fixed for infants under one month of age as for stillborn infants, in order to avoid the inducement which there might otherwise be to declare as stillborn infants who have in fact been born alive."

In the case of a cemetery provided under the Public Health (Interments) Act, 1879, the only charges which require the approval of the Ministry are charges for the use of the cemetery fixed by byelaw under the P. H. A., 1875, s. 141, as extended to cemeteries by s. 2 of the Act of 1879, and the Ministry consider that these charges should only extend to interments in common graves.

Crematoria.

By the Cremation Act, 1902, s. 2, the expression "burial authority" in that Act "shall mean . . . any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879 . . ." By s. 4 the powers of a burial authority to provide and maintain cemeteries, or anything essential, ancillary, or incidental thereto, shall be deemed to extend to and include the provision and maintenance of crematoria. See the Act in App. I., *post*, Vol. II.

3. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act. **Section 3.** 10 & 11 Vict. c. 65, incorporated with this Act.

This Act is set out in App. I., *post*, Vol. II.

THE PUBLIC HEALTH (FRUIT PICKERS LODGINGS) ACT, 1882.

(45 & 46 VICT. c. 23.)

An Act to extend the Public Health Act, 1875, to the making of Byelaws for Fruit Pickers. [12th July 1882.]

1. This Act may be cited as the Public Health (Fruit Pickers Lodgings) Act, 1882, and shall be construed as one with the Public Health Act, 1875. Short title and construction.

2. Section three hundred and fourteen of the Public Health Act, 1875 (*a*), which enables any local authority to make byelaws for securing the decent lodging and accommodation of persons engaged in hop picking within the district of such authority, shall be deemed to extend to and authorise the making of byelaws for securing the decent lodging and accommodation of persons engaged in the picking of fruit and vegetables. Power to make byelaws for fruit pickers.

(*a*) *Ante*, p. 652. For model byelaws under this section issued by the L. G. B., see Mackenzie and Handford's Model Byelaws, Vol. II., p. 47.

THE PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS), AMENDMENT ACT, 1883.

(46 & 47 Vict. c. 37.)

An Act to amend the Public Health Act, 1875, and to make provision with respect to the Support of Public Sewers and Sewage Works in Mining Districts. [25th August 1883.]

1. This Act may be cited as the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the principal Act), as amended by the Acts for the time being in force amending the same. Short title and construction.

This Act has been referred to in the notes to some of the sections of the P. H. A., 1875. It was passed apparently in consequence of *Re Corporation of Dudley* (1881), 8 Q. B. D. 86; 46 J. P. 340, where the Court of Appeal held that the P. H. A., 1875, imposed upon landowners through whose land a sewer was laid, an obligation to preserve to such sewer *subjacent* support, and gave them a right to immediate compensation for being deprived of the free power of working subjacent minerals. The court seemed to doubt whether any obligation was imposed as to *lateral* support, though from the remarks of JESSEL, M.R., in *Roderick* v. *Aston L. B.* (1877), 5 Ch. D. 328; 41 J. P. 516, it might be inferred that in his opinion there was a right also Effect of Act.

Note to Section 1.

of lateral support for which the landowner was entitled to compensation. See also the decision of PARKER, J., on this point in *Jary* v. *Barnsley Corporation*, *post*, p. 719.

The present Act deals with the subject of "support," but though the title would imply that it has reference only to "sewers," the definition in the next section shows that it has a much wider application. Its effect is briefly as follows: The local authority are not to be entitled to minerals under any sanitary works constructed by them unless such minerals have been expressly purchased. Such minerals must not be worked if under or near the works without giving notice to the authority, who may then require them to be left unworked, making compensation for them. The authority may, however, define the extent to which they desire support to be left. The amount of compensation is to be settled by arbitration. If the authority refuse to take the minerals, the owner is to be at liberty to work them, though he must not do so in any unusual manner so as to cause damage. Power is preserved to the owner, if he is prevented from working the mines under the sanitary works, of making mining communications so as to work the mines on either side. Except as aforesaid, a local authority are not hereafter to acquire any right of support, whether vertical or lateral; but the saving clause preserves all rights acquired before the passing of the Act. This Act materially affects the amount of compensation to be paid by a local authority in a mining district, for as by the mere execution of a sanitary work they acquire no right of support, they will not have to pay for it until the owner of the minerals is desirous of working them. It is to be noticed, however, that the Act is limited in its application to support from mining lands. The law as to support in other cases remains as it was before the Act passed; that is to say, as declared in the *Dudley Case*, *supra*.

By a Provisional Order, confirmed by Act of Parliament in 1875, the B. Corporation were authorised to put in force the powers of the Lands Clauses Acts with regard to certain lands, which they required for sewage purposes. In October, 1875, the corporation gave to the predecessor in title of the plaintiffs notice to treat under that Order for some of his land (excepting the mines and minerals) which they required to take, and the question of compensation was referred to arbitration. In 1876, the arbitrator made his award in respect of the lands (excepting all minerals lying within or under the same). The compensation having been paid, the lands, excepting all minerals lying within or under the same, were conveyed to the corporation by two conveyances, dated May, 1878, and April, 1883; the conveyances contained a power for the owner to work the minerals by underground workings only. In 1876, the corporation gave notice to the plaintiffs' predecessor in title, under the P. H. A., 1875, that they proposed to construct an outfall sewer on certain land in his possession, and in 1878, the umpire made his award (purporting to be under s. 308 of that Act) reciting an agreement that the landowner should have rights of herbage, passage and building over the land, and awarding that the corporation should pay a perpetual ground rent of so much per lineal yard for the sewer. In 1904, the plaintiffs, the lessees of the mines, gave notice to the corporation that they intended to commence work within forty yards of the sewage works, and the corporation then gave notice that if the plaintiffs proceeded to work they would demand compensation in respect of any damage to their sanitary works, and that they claimed that they had acquired a right to support in respect of such works before the passing of the Support of Sewers Act, 1883. The plaintiffs thereupon sued for a declaration that upon the true construction of the Act of 1883, the other Acts of Parliament, and the Provisional Order, awards and conveyances, the defendants were not entitled to have (1) the outfall sewer, or (2) the main sewage works, or either of them, supported by the underlying or adjacent minerals. It was held that the corporation acquired in respect of the lands conveyed for the purpose of the main sewage works a natural right of support by the subjacent minerals and the adjacent lands of the conveying parties for such land, and for any buildings or works reasonably in the contemplation of the parties when the land was conveyed; that with regard to the outfall sewer the corporation had, on the principle of *In re Dudley Corporation*, *ante*, p. 717, a right to support from the subjacent land, if not also from the adjacent land in the same ownership, which right must be considered to have been covered by the award; and that the sewage works and outfall sewer were accordingly sanitary works in respect of which a right to support had been acquired before the passing of the Act of 1883, and in respect of which right no compensation was, at the passing

of that Act, recoverable; and that the sewage works and outfall sewer were, therefore, excepted by s. 5, *post*, p. 722, from the operation of the Act, and were entitled to the rights of support required in respect of them (*Jary* v. *Barnsley Corporation*, [1907] 2 Ch. 600; 71 J. P. 468). **Note to Section 1.**

2. In this Act— Interpretation.

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

The expression "support" includes vertical and lateral support:

The expression "Sanitary Act" means the Act or Provisional Order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this act:

The expression "person" includes a body corporate.

It will be observed that the Act applies to the support of any "sanitary works," though the title would imply that it was confined to sewers. Thus, it will apply to gas and water works, or pipes, and to sewage works other than sewers.

As to the right of a local authority to support for buildings and property not being sanitary works within the meaning of this Act, see *Durham C. C.* v. *South Medomsley Colliery, Ltd.* (1916), 80 J. P. 343. And as to the right of support for sanitary works under leases, see *Westhoughton U. D. C.* v. *Wigan Coal and Iron Co., Ltd.*, [1919] 1 Ch. 159; 88 L. J. Ch. 60: 120 L. T. 242.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive) (*a*), with respect to mines, shall, in relation to any sanitary work (*b*) of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act (*b*) under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say): Application of provisions of Waterworks Clauses Act, 1847, with respect to mines, to sanitary works over mines.

(1) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority, and as if the expression "the special Act" referred to such Sanitary Act (*b*) and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work (*b*):

(2) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines (*c*), may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit (*d*):

Section 3.

(3) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act (*e*) :

(4) The amount of any compensation in respect of support for a sanitary work (*b*) payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act (*b*), together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act (*f*) :

(5) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place (*g*).

Common law right to lateral support.

(*a*) See these sections and notes thereto in App. I., *post*, Vol. II. These sections alter the common law where they are applicable. See *Davies* v. *James Bay Rail. Co.*, [1914] 1 A. C. 1043 ; 83 L. J. P. C. 339 ; 111 L. T. 946 ; 30 T. L. R. 633. The position of a local authority who have a common law right to lateral support of land owned by them was recently considered under the following circumstances : In 1875 the Manchester Corporation purchased by agreement under the powers of a special Waterworks Act of 1847, (1) an estate from S., who reserved to himself the minerals thereunder, with full powers to work the same without making compensation ; (2) an adjoining estate from T., including the minerals. In 1875 the corporation obtained a further special Act, which incorporated the Waterworks Clauses Act, 1847, and under it they constructed a reservoir partly on the S. land and partly on the T. land. By s. 22 of the Waterworks Clauses Act, 1847, if the owner, lessee, or occupier of any mines lying under the reservoirs of the undertakers, or within forty yards therefrom, be desirous of working the same, he must give the undertakers notice in writing of his intention so to do thirty days before the commencement of working, and if it appear to the undertakers, after an inspection of the mines, that the working of the mines is likely to damage their works, and they be willing to pay compensation for the mines to the owner, lessee, or occupier thereof, then he shall not work the same ; and by s. 23 if before the expiration of the thirty days the undertakers do not state their willingness to pay compensation to such owner, lessee, or occupier, he may work the mines as if that Act and the special Act had not been passed. The appellants, lessees of the mines under the S. land, gave notice to the corporation of their intention to work the mines under and adjacent to the reservoir, but the corporation gave no counter-notice of their willingness to pay compensation for the mines, and accordingly the appellants worked the mines and caused a subsidence of the T. land. In an action to restrain the appellants from so working their mines as to damage the T. land :—*Held*, that the mining sections (18—27) of the Waterworks Clauses Act, 1847, did not deprive the corporation of their common law right to lateral support of the surface of the T. land, and that

Note to Section 3.

they were entitled to an injunction in respect of the appellants' workings, both within and without the forty yards limit (*New Moss Colliery, Ltd.* v. *Manchester Corporation*, [1908] A. C. 117; 72 J. P. 169). See also *Howley Park, etc. Co.* v. *L. & N. W. Rail. Co.*, [1913] A. C. 11, as to the common law right of support enjoyed by a railway company outside the forty yards limit referred to in the mining sections of the Railways Clauses Consolidation Act, 1845.

(*b*) See the definition in the last section.

(*c*) The notice here referred to is the notice to the owner not to work the minerals, under the Act of 1847.

(*d*) Forty yards is the distance prescribed by the Act of 1847. Under this Act the authority may require support to any extent, whether less or more than forty yards. This will to some extent, if not altogether, obviate the difficulty arising out of the decision in *Metropolitan Board of Works* v. *Metropolitan Rail. Co.*, *ante*, p. 59.

(*e*) That is, on or before August 25th, 1884. See the section referred to. Compliance with this requirement is a condition precedent to the right to recover damage for injury caused by subsidence (*South Staffordshire, etc. Co.* v. *Mason* (1886), 56 L. J. Q. B. 255).

(*f*) That is to say, such compensation shall be paid pursuant to the provisions of the principal Act, unless the work is done pursuant to a special Act or Provisional Order which makes special provision for these purposes.

(*g*) This clause was probably inserted to protect the rights of the owners of mines under roads vested in urban authorities under the P. H. A., 1875, s. 149, *ante*, p. 273. It has been decided that that section does not vest the minerals in the urban authority (see cases in the notes thereto); and the Highway Act, 1878, s. 27, in App. I., *post*, Vol. II., contains an express provision with reference to the right to work mines under disturnpiked roads which have become vested in an urban authority. See *Att.-Gen.* v. *Conduit Colliery Co.* there cited. The case of *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. Q. B. 629; 49 L. T. 798, as to the right of subjacent support for gas pipes laid in a highway, may be referred to in illustration of this clause.

Limitation of right to support for sanitary works over mines.

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act (*a*) under the authority of which a sanitary work (*b*) has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

(*a*) See the definition in s. 2, *ante*, p. 719.

(*b*) This section gives the Act a retrospective operation, except in cases where a right of support has already been acquired, as to which see the next section, and *Jary* v. *Barnsley Corporation*, *ante*, p. 719. Its effect is to prevent for the future the acquisition of any right of support otherwise than as provided by the Act. Therefore no such right can hereafter be acquired by prescription. But as to the common law right of support which may belong to a local authority, see *New Moss Colliery, Ltd.* v. *Manchester Corporation*, *supra*.

With reference to the operation of the Statute of Limitations upon the right of action arising out of subsidences caused by mining operations, see *Darley Main Colliery* v. *Mitchell* (1886), 11 App. Cas. 127; 48 J. P. 823; *Crumbie* v. *Wallsend L. B.*, [1891] 1 Q. B. 503; 55 J. P. 421; *West Leigh Colliery Co., Ltd.* v. *Tunnicliffe and Hampson, Ltd.*, [1908] A. C. 27.

Section 5. Savings.

5. Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceeding concluded before or pending at the passing of this Act.

Where any right of support has been acquired (*a*) before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

(*a*) Note these words. This section was inserted to preserve to the local authority such rights of support as they had actually acquired by prescription or otherwise at the date of the Act. But such a right must have been actually acquired; in other words, if it is claimed to have been acquired by prescription, the prescriptive period must have been complete before the passing of the Act. If it was not complete the landowner will be entitled to the benefit of the Act.

As to such rights there is nothing in the previous sections which can apply so as to govern in any way the relative rights of the local authority and the landowner in respect of rights of support: see *Jary* v. *Barnsley Corporation*, *ante*, p. 719.

THE EPIDEMIC AND OTHER DISEASES PREVENTION ACT, 1883.

(46 & 47 VICT. c. 59.)

An Act to make better provision for the prevention of outbreaks of formidable epidemic, endemic, or infectious diseases, and to amend the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878.

[25th August 1883.]

Short title.

1. This Act may be cited as the Epidemic and other Diseases Prevention Act, 1883.

Extension of borrowing powers for preventing disease.

2. Whenever any part of England or of Ireland appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease (*a*), and the Local Government Board, England, under the provisions of the Public Health Act, England, 1875 (*b*), or the Local Government Board, Ireland, under the provisions of the Public Health Act, Ireland, 1878, make regulations for all or any of the following purposes, namely:

(1) For the speedy interment of the dead.
(2) For house to house visitation.
(3) For the provision of medical aid and hospital accommodation; and
(4) For the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease.

The purposes named in the said regulations shall be deemed to be

purposes for which sanitary authorities may borrow money, and the local authorities in England, and the sanitary authorities in Ireland, charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England and the Board of Public Works in Ireland may lend money to such authorities as if such purposes were "works" for which loans may be granted under the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878 (*c*).

Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the Local Government Board desirable in order to the prompt and effective execution of such regulations (*d*).

(*a*) See the notes to the P. H. A., 1875, s. 134, *ante*, p. 247.

(*b*) That is, under s. 134, *ante*, p. 246.

(*c*) See the provisions of the P. H. A., 1875, ss. 233—244, *ante*, pp. 521—539, as to borrowing. See also the Public Works Loans Act, 1875, and the Acts amending it, in App. I., *post*, Vol. II.

(*d*) See note (*b*) to s. 233, *ante*, p. 523, and s. 234 (3), as to the public notice and inquiry here referred to.

3. [*Ireland only, and repealed by* 61 *&* 62 *Vict. c.* 37, *s.* 32.]

THE PUBLIC HEALTH (CONFIRMATION OF BYELAWS) ACT, 1884.

(47 & 48 VICT. c. 12.)

An Act to amend the Public Health Act, 1875, *so far as relates to the Confirmation of Byelaws.* [19th May 1884.]

Short title and construction.

1. This Act may be cited as the Public Health (Confirmation of Byelaws) Act, 1884, and shall be construed as one with the Public Health Act, 1875.

Definitions.

2. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; (that is to say,)

"Incorporated enactments" means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847 (*), sections sixty-eight and sixty-nine of the Town Police Clauses Act, 1847 (†), and section forty-two of the Markets and Fairs Clauses Act, 1847 (‡), which Acts are hereinafter referred to as the Incorporated Acts (*a*):

"Confirming authority" means, as regards byelaws, rules, and regulations confirmed prior to the nineteenth day of August one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act and confirmed prior to the tenth day of August one thousand eight hundred and seventy-two, one of her Majesty's principal Secretaries of State; and as regards other byelaws, rules, and regulations, the Local Government Board (*b*).

(*) 10 & 11 Vict. c. 34, s. 128: Byelaws as to slaughter-houses.

(†) 10 & 11 Vict. c. 89, ss. 68, 69: Byelaws as to hackney carriages and public bathing.

(‡) 10 & 11 Vict. c. 14, s. 42: Byelaws as to markets.

(*a*) The Towns Improvement Clauses Act, 1847, s. 128, provides that the commissioners, *i.e.*, the urban authority, shall, from time to time, by byelaws to be

Note to Section 2.

made and confirmed *in manner hereinafter provided*, make regulations for the licensing, etc. of slaughter-houses, etc. The manner provided by that Act is set out in ss. 200—209, which are not, however, incorporated with the Public Health Act, but it would seem, notwithstanding, that these provisions applied to byelaws made by a local authority pursuant to the P. H. A., 1875 (*Wallasey Tramway Co.* v. *Wallasey L. B.* (1883), 47 J. P. 821.) However this may be, s. 202 required the byelaws to be confirmed in the prescribed manner, and if no manner of confirmation were prescribed, then by a judge of the superior courts or by the justices in quarter sessions. In order to remove all doubts with regard to the application of these provisions to byelaws made by a local authority under the P. H. A., 1875, this Act provides that no confirmation shall be necessary in future except that of the L. G. B. (now the Ministry of Health). Provision is also made for the validity of past confirmation by the Secretaries of State under former Public Health Acts or local Acts. The foregoing remarks apply *mutatis mutandis* to the other incorporated enactments, all of which are set out in App. I., *post*, Vol. II.

(*b*) As to the provisions of the P. H. A., 1875, with regard to the confirmation of byelaws, see s. 184, *ante*, p. 441.

Confirmation of byelaws.

3. Every byelaw made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any local Act, or any provisional order or any Act confirming such provisional order, and every rule and regulation made or to be made by an urban authority under section forty-eight of the Tramways Act, 1870 (*a*), shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval.

(*a*) See the section in App. I., *post*, Vol. II.

Saving clause.

4. This Act shall not invalidate the confirmation, allowance, or approval of any byelaw, rule, or regulation, confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any byelaw made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, if such byelaw has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of byelaws in any of the incorporated Acts, such byelaw is required to be confirmed, allowed, or approved otherwise than by the confirming authority.

THE PUBLIC HEALTH (OFFICERS) ACT, 1884.

(47 & 48 VICT. c. 74.)

An Act to amend the Public Health Act, 1875, with respect to the Officers of Local Authorities. [14th August 1884.]

Short title.

1. This Act may be cited as the Public Health (Officers) Act, 1884, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

2. Proceedings for the recovery of any penalty under the hundred and ninety-third section of the principal Act shall not be taken except with the consent in writing of the Attorney-General. Section 2. — Restriction on recovery of penalties.

The P. H. A., 1875, s. 193, *ante*, p. 456, forbids officers of a local authority to contract with such authority, or to accept any fee or reward other than their proper salaries. This provision is enforced by a penalty of £50, which the section provided might be recovered by *any person*, and these words were held in *Fletcher* v. *Hudson*, *post*, p. 730, to enable any person to recover it, whether he was aggrieved or not, and whether or not he had obtained the leave of the Attorney-General under s. 253, *ante*, p. 559. In so far as the proceedings for the penalty are concerned, the consent of the Attorney-General must now be obtained. See also the Public Health (Members and Officers) Act, 1885, *post*, p. 729, which contains further amendments of the law.

THE PUBLIC HEALTH AND LOCAL GOVERNMENT CONFERENCES ACT, 1885.

(48 & 49 VICT. c. 22.)

An Act to provide for Expenses incurred in relation to Conferences of Local Authorities. [25th June 1885.]

1. This Act may be cited as the Public Health and Local Government Conferences Act, 1885. Short title.

2. Any local authority may, when empowered by and subject to any regulations made by the Local Government Board in that behalf (which regulations the said Board is hereby authorised from time to time to make, vary, or rescind), pay the reasonable expenses of any member or members or clerk to the local authority attending any conference or meeting of members of local authorities held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference, and may charge the amount to any rates applicable to the general purposes of the Public Health Act, 1875, within their district. Expenses of local authorities may be allowed.

The foregoing enactment is simply a repetition, *mutatis mutandis*, of the Poor Law Conferences Act, 1883. General Orders have been made under it dated May 13th, 1891, and December 28th, 1896, for urban and rural authorities respectively, the text of which will be found in App. II., *post*, Vol. II.

The travelling expenses of members of local authorities in the execution of their ordinary duties within their districts are not payable out of the rates (*R.* v. *Dolby* (1902), 66 J. P. 521 ; 87 L. T. 27).

It will be observed that the Act refers to no officer except the clerk.

3. Expressions used in this Act have the same respective meanings as they have in the Public Health Act, 1875, save and except that in England the term "local authority" shall not mean or include the urban authority of any borough. Interpretation.

In other words, the Act applies only to rural authorities and to urban authorities not being borough councils. It does not apply to a town council who are the urban authority in their borough. Also, it does not apply to a port sanitary authority.

4. [*Application to Ireland.*]

Section 1.

THE PUBLIC HEALTH (SHIPS, ETC.) ACT, 1885.

(48 & 49 VICT. c. 35.)

An Act to amend the Public Health Act, 1875, *in relation to Ships and Port Sanitary Authorities.* [31st July 1885.]

Short title.

1. This Act may be cited as the Public Health (Ships, etc.) Act, 1885, and shall be construed as one with the Public Health Act, 1875, in this Act referred to as the principal Act.

Amendment of s. 110 of the P. H. A., 1875.

2. Section one hundred and ten of the principal Act shall have effect not only for the purpose of the provisions of that Act relating to nuisances, but also for the purpose of such of the provisions of that Act relating to infectious diseases and hospitals as are referred to in the Schedule to this Act.

Section 110, as amended, will now read as follows: For the purposes of the provisions of this Act relating to nuisances, and also for the purpose of such of the provisions of this Act relating to infectious diseases and hospitals as are contained in ss. 120, 121, etc. (see the schedule, *post*, p. 727), any ship or vessel lying in any river, harbour, or other water within the district of a local authority, shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district, and any ship or vessel lying in any river, harbour, or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the M. of H., and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying. The master, or other officer in charge of any such ship or vessel, shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel. This section shall not apply to any ship or vessel under the command or charge of any officer bearing his Majesty's commission, or to any ship or vessel belonging to any foreign government. See the notes to this section, *ante*, p. 210. The provisions of some of the later Public Health Acts are expressly extended to ships. See, for instance, the Infectious Disease (Notification) Act, 1889, s. 13, *post*, p. 804.

Constitution of permanent port sanitary authorities.

3. In any case in which the Local Government Board are by the principal Act authorised permanently to constitute a port sanitary authority by Provisional Order, they may permanently constitute a port sanitary authority by Order (*a*).

Every Order made under this section shall specify a day on which it shall come into operation in the event of its not becoming a Provisional Order as hereinafter provided, and at least four weeks before such day a copy of it shall be sent by the Local Government Board to every riparian authority (*b*) which is by the Order or otherwise required to contribute to the expenses of the port sanitary authority (*c*), and if before such day notice in writing shall be received by the Local Government Board from any such riparian authority objecting to the Order, and such notice is not withdrawn before such day, the Order shall be deemed to be a Provisional Order (*d*) duly made by the Local Government Board under the principal Act, and in the event of its being confirmed by Parliament shall come into operation on such day as may be provided in that behalf in the Act confirming it.

Any Order made under this section may, if the same has not become

a Provisional Order, be repealed, altered, or amended by any subsequent Order made by the Local Government Board. Section 3.

(*a*) Section 287 of the principal Act enabled the Board (now the Ministry of Health) by Provisional Order permanently to constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in England, or the waters of such port, or any conservators, commissioners, or other persons having authority in or over such port or any part thereof (which local authority, conservators, commissioners, or other persons are in the Act referred to as a "riparian authority") the sanitary authority of the whole of such port or of any part thereof (in the Act referred to as the "port sanitary authority"). The Board were also empowered by Provisional Order permanently to constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and to prescribe their joint action; or by forming a joint board consisting of representative members of any two or more riparian authorities in the same manner as is by the Act provided with respect to the formation of a united district. And the Board were further empowered by Provisional Order permanently to constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports or any parts thereof. See the section, *ante*, p. 622.

The effect of the above amendment is to abolish the necessity for a Provisional Order in the foregoing cases, under the circumstances set out in the section, and to enable the Board in each of the cases to permanently constitute a port sanitary authority by an Order which will require no confirmation by Parliament. The Orders made by the Board will be binding and conclusive (s. 295, *ante*, p. 627).

(*b*) See the definition of a riparian authority in s. 287, *supra*.

(*c*) As to the expenses of a port sanitary authority and the mode of obtaining contributions from the several riparian authorities, see s. 290, *ante*, p. 624.

(*d*) In other words, s. 287 will apply as it originally stood, and the Board may then make an Order temporarily constituting the port sanitary authority pending the confirmation of the Provisional Order. As to the making of Provisional Orders, see s. 297, *ante*, p. 629.

SCHEDULE.

Sections 120, 121, 124, 125, 126, 128, 131, 132, and 133 of the Public Health Act, 1875.

The following are the words of the above sections as applied by this Act:

Section 120 (*ante*, p. 227).—Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any *ship* or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the *master or other officer in charge* of such *ship* or part thereof requiring him to cleanse and disinfect such *ship* or part thereof and articles within a time specified in such notice. If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default; and the local authority shall cause such *ship* or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the *master or other officer in charge of such ship* in default in a summary manner. Where the *master or other officer in charge of such ship* or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section,

Schedule.

such authority may, without enforcing such requirements on such *master or other officer*, with his consent cleanse and disinfect such *ship* or part thereof and articles, and defray the expenses thereof.

From the notes to this section, p. 228, *ante*, it will be seen that s. 5 of the Infectious Disease (Prevention) Act, 1890, may have superseded s. 120 in some districts. If so, s. 5 of the Act of 1890 will be applied for the purposes of this Act (Interpretation Act, 1889, s. 38 (1)). See also the notes under the other sections applied by this Act.

Section 121 (*ante*, p. 229).—Any local authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Section 124 (*ante*, p 231).—Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district, any person who is suffering from any dangerous infectious disorder, and is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority. An order under this section may be addressed to such constable or officer of the local authority as the justice making the same may think expedient ; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

It will be seen that this section already applied to ships, but the new Act makes clear what authorities may act under it. (See s. 2, *ante*, p. 726.)

Section 125 (*ante*, p. 232).—Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder ; and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

See the remarks on s. 124, *supra*. For "Local Government Board" now read "Ministry of Health" (9 & 10 Geo. 5, c. 21).

Section 126 (*ante*, p. 233).—Any person who—

(1) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street public place shop inn or public conveyance, or enters any public conveyance without previously notifying to the owner conductor or driver thereof that he is so suffering ; or

(2) Being in charge of any person so suffering, so exposes such sufferer ; or

(3) Gives lends sells transmits or exposes, without previous disinfection, any bedding clothing rags or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds ; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the

provisions of this Act with respect to the disinfection of the conveyance. Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding clothing rags or other things for the purpose of having the same disinfected. Schedule.

The application of this section to ships is not clear. It does not appear to have any bearing upon persons or things in ships beyond what it had before the Act.

Section 128 (*ante*, p. 235).—Any person who knowingly lets for hire any *ship* or part of a *ship* in which any person has been suffering from any dangerous infectious disorder, without having such *ship* or part of a *ship* and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds.

Section 131 (*ante*, p. 238).—Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception ; or contract for the use of any such hospital or part of a hospital or place of reception ; or,

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

Two or more local authorities may combine in providing a common hospital.

Section 132 (*ante*, p. 244).—Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

Section 133 (*ante*, p. 246).—Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

For "Local Government Board" now read "Ministry of Health" (9 & 10 Geo. 5, c. 21).

THE PUBLIC HEALTH (MEMBERS AND OFFICERS) ACT, 1885.

(48 & 49 VICT. c. 53.)

An Act to amend the Public Health Act, 1875, *with respect to the Members and Officers of Local Authorities.* [6th August 1885.]

1. This Act may be cited as the Public Health (Members and Officers) Act, 1885, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act. Short title.

2. Notwithstanding anything in the hundred and ninety-third section of the principal Act (*a*), or any similar restrictions in any local Act. to the contrary, it shall not be unlawful for any officer or servant Amendment of s. 193 of the P. H. A., 1875.

Section 2.

appointed or employed under the principal Act or local Act by the local authority to be concerned or interested in any contract with the local authority made with such consent or approval as is hereinafter mentioned for the sale, purchase, leasing, or hiring of any lands, rooms, or offices (*b*), or to be concerned or interested in any contract with the local authority as a shareholder in any joint stock company (*c*), and no officer or servant of a local authority shall be incapable of holding any office or of being employed under the principal Act or local Act, or be liable to any penalty by reason only of his having been concerned or interested either before (*d*) or after the passing of this Act in any such contract as aforesaid. No such contract as aforesaid shall be made after the passing of this Act, or approved if made before the passing of this Act, for the sale, purchase, leasing, or hiring of any lands, rooms, or offices except with the consent of two-thirds of the number of the members of the local authority present (*e*) at a meeting held after seven clear days notice shall have been published in some newspaper circulating in the neighbourhood, and after notice shall have been sent in writing to every member stating the nature of the contract, and the time and place of the meeting at which the question is to be considered (*f*).

(*a*) Section 193 (*ante*, p. 456) prohibited officers or servants appointed under the P. H. A., 1875, from being in anywise concerned or interested in any bargain or contract made with such authority for any of the purposes of the Act. If any officer or servant was so concerned or interested, he was to be incapable of afterwards holding or continuing in any office or employment under the Act, and was to forfeit and pay the sum of £50, which might be recovered by any person, with full costs of suit, by action of debt. In *Fletcher* v. *Hudson* (1880), 5 Ex. D. 287 ; 45 J. P. 5, it was laid down by BRAMWELL, B., that the penalty under s. 193 might be recovered by any person, although he was neither a party aggrieved nor had the consent of the Attorney-General under s. 253 (*ante*, p. 569). To meet this decision the Public Health (Officers) Act, 1884 (p. 724, *ante*), provided that proceedings for the recovery of any penalty under s. 193 should not be taken without the consent in writing of the Attorney-General. In other respects, however, s. 193 remained in full force. In *Todd* v. *Robinson* (No. 2) (1884), 14 Q. B. D. 739 ; 49 J. P. 278, it was held that an officer of a local board, who was a shareholder in a gas company having a contract with the board for the lighting of the streets, was, so long as the contract existed, interested in a bargain or contract with the board within the meaning of s. 193, and if the contract was capable of producing any profit to the shareholders of the company, he was liable to the penalty imposed by that enactment. In *Burgess* v. *Clark* (1884), 14 Q. B. D. 735 ; 49 J. P. 388, it was held that a demise of rooms was a bargain or contract within the meaning of s. 193, and that if an officer, employed by a local board, let rooms to the board at a rent payable to him, although the rooms were used by the board in the transaction of its business, he became liable to the penalty ; for the rent could not be considered as an *allowance* in addition to his salary under ss. 189, 193, being unconnected with the performance of any services in the course of his employment under the board. It was to meet these and similar cases that the present statute was passed. It must be noted that the Act does not affect the decision in *Todd* v. *Robinson* (No. 1) (1884), 12 Q. B. D. 530 ; 48 J. P. 692, that when any penalty is recovered under the section the Crown cannot remit the penalties under 22 Vict. c. 32, as that Act relates only to persons upon whom a penalty was imposed by judicial authority.

(*b*) This meets the case of *Burgess* v. *Clark*, *supra*.

(*c*) This meets the case of *Todd* v. *Robinson* (No. 2), *supra*. The words "joint stock company" will apparently apply to every joint stock company, however formed.

(*d*) The effect of this provision is to remove any liability or disqualification existing

before the time of the passing of the Act by reason of an officer having entered into a contract of the kind mentioned in the section. **Note to Section 2.**

(*e*) The necessary majority is two-thirds of those present (not of the whole board), whether voting or not.

(*f*) The question of such a contract will in general arise at an ordinary meeting. In such a case the consideration of the question should be postponed until a day named, and the clerk should be instructed to insert the necessary advertisement, and to send a notice to every member stating the nature of the contract, etc. As to the sending of the notice, see s. 267, *ante*, p. 593.

3, 4. [*Repealed.*]

These sections were repealed by the L. G. A., 1894, *post*, p. 902, s. 46 of which contains the provisions now in force.

THE HOUSING OF THE WORKING CLASSES ACT, 1885.

(48 & 49 VICT. c. 72.)

An Act to amend the Law relating to Dwellings of the Working Classes.
[14th August 1885.]

Whereas it is expedient to amend the law with reference to the provision of suitable dwellings for the working classes:

The preamble was repealed by the S. L. R. A., 1898, and the rest of the Act was repealed by the Housing of the Working Classes Act, 1890, *post*, Vol. II., except ss. 3, 7—9, and except s. 10 so far as it relates to byelaws authorised by those sections. Section 3 referred only to the sale of the sites of certain metropolitan prisons (Millbank and Coldbath Fields) to the Metropolitan Board of Works.

The Housing of the Working Classes Act, 1890, and other Housing Acts were in former editions of this work included in Vol. I. in chronological order. In the present edition they, or any consolidating Act which may replace them, will be included in Vol. II. The unrepealed sections of the Act of 1885 are however allowed to remain here as they effect amendments of general sanitary law.

* * * * * *

Amendment of General Sanitary Law, etc.

7. It shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government to put in force from time to time as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority. General duty of local authority to enforce the law.

This section is repealed, so far as it relates to London, by the P. H. (London) A., 1891, s. 142.

The P. H. A., 1875, s. 299, *ante*, p. 632, provides that if an authority makes default in enforcing any of the provisions of that Act which it is their duty to enforce, the L. G. B., now M. of H., on complaint made may compel them to perform their duty. (The notes to that section should be referred to in explanation of the precise effect of such provision.) The present section is much wider in its operation. It applies to the execution not only of the P. H. A., but of all laws relating to public health and local government. And as it makes such execution a statutory duty, the remedy of any person aggrieved by any default, other than one to which the P. H. A., 1875, s. 299, is applicable, will apparently be by *mandamus*. The only limitation of the section is that in the last clause, which seems to confine its operation to the execution of

Note to Section 7.

such laws as may be necessary to secure the proper sanitary condition of premises. An example of the operation of this section may be given by referring to the P. H. A., 1875, s. 23, *ante*, p. 83. Under that section a local authority were originally bound to give notice to an owner to drain his house effectually; on his making default they were empowered (not bound) to execute the necessary works themselves. Now, apparently, by reason of the provision in the text, they have no option, but must execute the necessary works. Similar examples will readily occur to readers of the Public Health Act.

Amendment of s. 90 of the P. H. A., 1875.

8. *Whereas under section ninety of the Public Health Act*, 1875, *the Local Government Board can declare that section to be in force within the district of a sanitary authority, and after the publication of notice of such declaration such authority is empowered to make byelaws with respect to lodging-houses, and it is expedient to authorise every such authority to make such byelaws without any declaration by the Local Government Board: Be it therefore enacted as follows:*

Every sanitary authority shall have power to make byelaws for the matters specified in section ninety of the Public Health Act, 1875.

The preamble to this section was repealed by the S. L. R. A., 1898. Section 90 of the P. H. A., *ante*, p. 161, enabled the L. G. B. to empower a local authority to make byelaws as to houses let in lodgings, *i.e.*, houses other than common lodging-houses. The powers given by that section may now be exercised by any local authority without the intervention of the Ministry of Health.

Tents and vans used for human habitation.

9.—(1) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health (*a*), or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875; and the provisions of that Act shall apply accordingly (*b*).

(2) A sanitary authority may make byelaws (*c*) for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same (*d*).

(3) Where any person duly authorised by a sanitary authority or by a justice of the peace (*e*) has reasonable cause to suppose either that there is any contravention of the provisions of this Act or any byelaw made under this Act in any tent, van, shed, or similar structure used for human habitation, or that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disorder (*f*), he may, on producing (if demanded) either a copy of his authorisation purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence (*g*) of his being authorised as aforesaid, enter by day (*h*) such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such byelaw or a person suffering from a dangerous infectious disorder (*f*).

(4) For the purposes of this section "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

Section 9.

(5) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings (*i*).

(6) *This section shall apply to the metropolis, with the substitution of section nineteen of the Sanitary Act,* 1866, *for section ninety-one of the Public Health Act,* 1875, *and of nuisance authority, under the Nuisance Removal Acts, for sanitary authority* (*k*).

(7) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of her Majesty's military or naval forces.

(*a*) It is not necessary that a nuisance, in order to be within this section, should *also* be injurious to health. See the note to the corresponding words in s. 91 of the P. H. A., 1875, *ante*, p. 168, and *Bishop Auckland L. B.* v. *Bishop Auckland Iron Co.* (1882), 10 Q. B. D. 138; 47 J. P. 389.

(*b*) This is one of the most useful provisions of the Act. It enables local authorities to control a class of persons hitherto incapable of being reached through the sanitary laws. The effect of the sub-section is as follows: It is now the duty of the local authority to inspect the district for the detection of the nuisances to which the section relates (P. H. A., 1875, s. 92). Information of a nuisance under the sub-section may be given by any person aggrieved, or by two inhabitant householders, by an officer of the local authority, by the relieving officer, by any constable or police officer (s. 93). The local authority must then serve a notice for the abatement of the nuisance on the occupier of the tent, van, etc., for there will rarely be an owner distinct from the occupier (s. 94). On non-compliance with the notice complaint may be made to a justice (s. 95), and an order may be made by a court of summary jurisdiction (s. 96). It may be doubted whether a tent, van, etc., is a house or building within s. 97.

See also as to the remedy by action for an injunction, *Att.-Gen.* v. *Stone* (1895), 60 J. P. 168; *Att.-Gen.* v. *Brown* (1898), Times, July 23rd; and as to other means of getting rid of gipsies, see 59 J. P. 787; 60 J. P. 701. For examples of proposed byelaws against gipsies which were disallowed by the Home Secretary, see 32 L. J. 15.

(*c*) The making, authentication, etc. of these byelaws is regulated by ss. 182—187 of the P. H. A., 1875, *ante*, pp. 432—446. The provision of s. 185 as to the printing and publication of byelaws should be attended to. See the next section.

(*d*) The model series of byelaws under this section will be found in Mackenzie and Handford's Model Byelaws, Vol. II., p. 37. Local authorities will do well to adopt the byelaws without greater modification than may be absolutely necessary.

(*e*) Sanitary authorities may give a general authority to their officers or a special authority to any other person. A justice may also give a special authority; probably he will do so on application similar to an information.

(*f*) Note that all infectious diseases are not dangerous. The text refers to diseases such as small-pox or the like.

(*g*) If the authority is given by a justice it should be in writing, and the original should be produced.

(*h*) That is, between 6 a.m. and 9 p.m. See sub-s. (4).

(*i*) As to what amounts to obstruction, see *Baker* v. *Ellison*, [1914] 2 K. B. 762; 78 J. P. 244; *Swallow* v. *London C. C.*, [1916] 1 K. B. 224; 80 J. P. 164.

(*k*) This sub-section was repealed by the P. H. (London) A., 1891, s. 142. Compare s. 95 of that Act.

Application of certain provisions as to byelaws and local inquiries.

10.—(1) With respect to byelaws authorised by this Act (*a*) *or by the Labouring Classes Lodging Houses Act,* 1851 (*b*), to be made—

(a) Sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such byelaws are

Section 10.

made by the Metropolitan Board of Works, or any nuisance authority in the metropolis; and

(b) The provisions of the Public Health Act, 1875, relating to byelaws, where such byelaws are made by a sanitary authority (*c*),

shall apply to such byelaws, and a fine or penalty under any such byelaw may be recovered on summary conviction.

(2) For the purposes of the execution of their duties under this Act the Local Government Board may hold such local inquiries as the Board see fit, and sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, relating to inquiries by such Board shall apply.

This section was repealed by the Housing of the Working Classes Act, 1890 (see note as to this Act on p. 731), except in so far as it relates to byelaws made under the sections of this Act remaining unrepealed.

(*a*) See the last section.

(*b*) This Act having been repealed by the Housing of the Working Classes Act, 1890 (see note as to this Act on p. 731), the words in italics were repealed by the S. L. R. A., 1898.

(*c*) These provisions are contained in ss. 182—187, *ante*, pp. 432—446. The fine or penalty will now be recoverable in manner provided by the P. H. A., 1875 (see the P. H. A., 1907, s. 6, *post*).

* * * * * *

THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1886.

(49 & 50 VICT. c. 32.)

An Act to amend the Contagious Diseases (Animals) Act, 1878.

[25th June 1886.]

[At the present time (April, 1922) s. 9 of this Act still has operative effect. By the Milk and Dairies Act, 1914, sub-ss. (3) (5) and (6) of s. 9 of the Act of 1886 were repealed so far as they related to England. The coming into operation of the Milk, etc. Act, 1914, was postponed by Order of the L. G. B. until October 1st, 1915. The Milk and Dairies Acts Postponement Act, 1915, provided that the Act of 1914 should not come into operation until such date, not being later than the expiration of one year after the termination of the War as the L. G. B. might by Order appoint. Later in the same month (July) in which the Postponement Act, 1915, was passed, the Milk and Dairies (Consolidation) Act, 1915, was placed on the Statute Book, but did not, and has not since, become an operative enactment, because by s. 21 (1) thereof it is provided that it shall come into operation on such date, not being later than the expiration of one year after the termination of the war as the L. G. B. (now the M. of H.) may by Order appoint, and no such order has been made. The Consolidation Act of 1915 is, it is believed, considered to be an unworkable measure, and it is proposed to modify it or replace it by yet another Act. The Consolidation Act provides that on its coming into operation the Act of 1914 and the unrepealed portion of the Contagious Diseases (Animals) Act, 1886, shall be repealed. The position, therefore, is as follows: At the moment s. 9 of the Contagious Diseases (Animals) Act, 1886 (the only portion of the Act now unrepealed), is in force, and so are the various Dairies, Cowsheds, and Milk Shops Orders. If an amending Act or a new Act containing the like repeals as in the Consolidation Act, 1915, comes into force before August 31st next (this being the end of the year following the official termination of the War) the unrepealed portion of the Act of 1886 will disappear, but, presumably, there will be a provision like that in force in the proviso to s. 21 (3) of the Consolidation Act of 1915 continuing in force existing orders and regulations until fresh ones are issued. If time does not permit of the passing of an amending Act or new Act before August 31st next and the expedient of a suspensory Act is again adopted,

then, unless at the same time there is also a further suspension of the coming into operation of the Act of 1914, that Act will come into operation. The effect of this would be that portions only of the unrepealed section of the Act of 1886 would be repealed, and the existing Orders and Regulations would be abrogated because in the Act of 1914 there was no saving such as is contained in the proviso to s. 21 (3) of the Act of 1915. In this state of chaos the Editors have thought it best to delete here s. 9 of the Act of 1886 and the notes thereto and not to put into this volume the Acts of 1914 and 1915, but to leave the matter to be dealt with in Vol. II.]

THE LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 VICT. c. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.

[13th August 1888.]

This Act established county councils throughout England and Wales, and transferred to them the administrative powers and duties formerly exercised and performed by justices in quarter sessions. In so far as it relates only to county councils, their election, powers, duties and liabilities, it is beyond the scope of the present Work, and on these subjects the reader is referred to a separate work on the Act by one of the Editors *; but it contains some provisions, and these of great importance, relating to sanitary authorities, and it is therefore necessary to set out these provisions, in order that the present volume may comprehend all statutory provisions such as are described in its title.

* * * * * *

Transfer to county council of powers of certain government departments and other authorities.

10.—(1) *After the passing of this Act* it shall be lawful for the Local Government Board to make from time to time a Provisional Order for transferring to county councils—

(a) any such powers, duties, and liabilities of her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government department, as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character: also

(b) any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians) as are conferred by or in pursuance of any statute;

and such Order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in her Majesty in Council:

(2) Provided that before any such Order is made, the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a

* The Local Government Act, 1888, 3rd ed., by Macmorran and Dill.

Section 10. Secretary of State, or the Board of Trade, or any other Government department, by such Secretary of State, Board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body; and every such Provisional Order shall be of no effect until it is confirmed by Parliament.

(3) If any such powers, duties, or liabilities as are referred to in any Provisional Order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils.

(4) The Act of Parliament confirming any Provisional Order made under this section shall be a public general Act.

Italicised words repealed by the S. L. R. A., 1908.

This section was amended by the Local Government (Transfer of Powers) Act, 1903, as follows:

"1.—(1) Section ten of the Local Government Act, 1888, in so far as it authorises the transfer to county councils of certain powers, duties and liabilities of Government Departments, shall be construed as authorising the transfer by Provisional Order of all or any of those powers, duties or liabilities to the council of a particular county or county borough, as well as to such councils generally.

"(2) A Provisional Order shall not be made under this section except on the application of the council of a county or county borough.

"(3) Where the Local Government Board propose to make a Provisional Order under this section transferring any power, duty or liability to the council of a county or county borough, the Board shall give notice to all local authorities who, in the opinion of the Board, are likely to be affected by the transfer, and if, within such time as the Board prescribe, a majority of those authorities notify to the Board that they object to any such proposed transfer the Order shall not be proceeded with so far as relates to that transfer, but without prejudice to the power of the Board to propose a new Order.

"(4) For the purposes of this Act, the expression 'local authorities' means the following local authorities, namely, the council of a borough or other urban district, a rural district council, a board of guardians, a metropolitan borough council and the common council of the city of London."

The powers of the L. G. B. are now exercised by the M. of H. (9 & 10 Geo. 5, c. 21).

Entire maintenance of main roads by county council.

11.—(1) Every road in a county (*a*) which is for the time being a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878 (*b*), inclusive of every bridge carrying such road if repairable by the highway authority (*c*), shall, *after the appointed day* (*d*), be wholly (*e*) maintained and repaired by the council of the county in which the road is situate, and such council, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road (*f*), shall have the same powers and be subject to the same duties as a highway board, and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges (*g*), and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions (*h*), and for asserting the right of the public to the use and enjoyment of the roadside wastes (*i*); and the execution of this section shall be a general county purpose, and the costs thereof shall be charged to the general county account (*k*).

Note to Section 11.

(*a*) The expression "county" practically includes every place within an administrative county, *i.e.*, a county for which a county council is elected. It includes all quarter sessions boroughs other than county boroughs. See ss. 35 (3) and 38 (3), *post*, pp. 762, 764.

(*b*) The Highways and Locomotives (Amendment) Act, 1878, so far as material and unrepealed, is set out in App. I., *post*, Vol. II.: see especially ss. 13—17, and the notes thereto. The administrative business formerly done by quarter sessions under that Act in respect of all powers vested by it in the "county authority" is transferred to the county councils by s. 3 (viii.) of this Act.

Bridges.

(*c*) County bridges over which a main road is carried are not affected by this provision. Apart from it they are repairable by the county council, the powers and duties of the justices in quarter sessions having been transferred to them by s. 3 (viii.) of this Act. The liability to repair a bridge *ratione tenuræ* is not transferred to a county council by virtue of this provision. But all bridges carrying main roads, if repairable by the highways authority, became in effect county bridges by virtue of this provision.

(*d*) Italicised words repealed by the S. L. R. A., 1908. The appointed day was April 1st, 1889.

(*e*) Under 41 & 42 Vict. c. 77, s. 13, the county authority contributed only a moiety of the cost of maintenance. Now they are liable for the entire cost. This provision, however, does not affect their right to receive the income of charitable trusts created for the repair of the road or bridge (*Att.-Gen.* v. *Day*, [1900] 1 Ch. 31; 64 J. P. 88; *Re Hall's Charity* (1912), 76 J. P. 9; 28 T. L. R. 32).

A local Act of 1871 gave power to the corporation of a borough to order that in any street (whether or not a highway repairable by the inhabitants at large) footways should be made by the frontagers of such form, size, and materials as the corporation should direct; and provided that if the frontagers made default in execution of the work, the corporation might cause the work to be executed and recover the cost from the frontagers. It was held that when the borough had by virtue of this Act become a county borough, the provisions of s. 11, *supra*, had not the effect of repealing the provisions of the local Act as regards streets which were main roads (*Lodge* v. *Huddersfield Corporation*, [1898] 1 Q. B. 847; 62 J. P. 387; see also *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566).

"Maintenance, repair and improvement" of roads.

(*f*) Under 41 & 42 Vict. c. 77, s. 13, the county authority contributed only towards the cost of *maintenance*. It was held that the cost of removing snow, so as to render a main road passable, was an expense within the meaning of this term (*Amesbury Union* (*Guardians of*) v. *Wiltshire JJ.* (1883), 10 Q. B. D. 480; 47 J. P. 184). *Cf. Acton U. D. C.* v. *London United Tramways Co., Ltd.*, [1909] 1 K. B. 68; 73 J. P. 6, as to a tramway company's liability to remove snow from a street under the Tramways Act, 1870. The cost of scavenging and watering was also held to be within the term so far as these were necessary for keeping the road in repair, as distinguished from scavenging and watering for purposes of public health and comfort (*R.* v. *Essex JJ.* (1888), 4 T. L. R. 676; *Burnley Corporation* v. *Lancashire C. C.* (1889), 54 J. P. 279; *Warminster L. B.* v. *Wiltshire C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375). The House of Lords held that lighting was not "maintaining or repairing," in *Lanarkshire Road Trustees* v. *Fleming* (1886), 14 Ct. of Sess. Cas. (H. L.) 18; and in *Warminster L. B.* v. *Wiltshire C. C.*, *supra*, the court held that the cost of lighting main roads was not cast upon county councils by the wider language of the text. The words "improvement and enlargement of and other dealing" were inserted to meet the decision in *Leek Improvement Commissioners* v. *Staffordshire JJ.* (1888), 20 Q. B. D. 794; 52 J. P. 403, where it was held that converting a macadamised road into a paved road did not come within the term "maintenance," but it would no doubt be an improvement or other dealing with the road within the meaning of the text. See also *London* (*Lord Mayor, etc. of*) v. *Barnes* (1896), 12 T. L. R. 135. The Highway Act, 1864, ss. 47, 48, enumerates certain acts which are to be deemed improvements which a highway board may make, and the county council will have the same powers. These improvements include the conversion of any road that has not been stoned into a stoned road, the widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges,

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and the doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. See also as to improvements the Development and Road Improvement Funds Act, 1909, in App. I., *post*, Vol. II., amended by the Roads Act, 1920, *post*, Vol. II. The county council is liable to repair footpaths by the side of main roads, paved or pitched crossings, etc. (see *Warminster L. B.* v. *Wiltshire C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375; *In re Burslem Corporation and Staffordshire C. C.*, [1896] 1 Q. B. 24; 59 J. P. 772; *Derbyshire C. C.* v. *Matlock Bath and Scarthin Nick U. D. C.*, [1896] A. C. 315; 60 J. P. 676).

The owner of land, through which a main road ran, brought an action against the county council claiming a declaration that the council were liable to repair the retaining walls on either side of such road; he also asked for a mandatory injunction ordering the council to do any necessary repairs to such walls. It was held that the court could not consider whether the repair of these walls (or any other particular work) was necessary for the proper maintenance of the road, and that it would be contrary to practice to grant a mandatory injunction to do repairs even if the council were liable to repair the walls (*Att.-Gen.* v. *Staffordshire C. C.*, [1905] 1 Ch. 336; 69 J. P. 97; but *cf. R.* v. *Wilts and Berks Canal Co.*, [1912] 3 K. B. 623; 77 J. P. 24). The liability of a highway authority is general, *i.e.*, merely to repair and maintain the highway; they must select and adopt proper methods of performing their duty; the court will not prescribe methods, but merely consider the result (*Att.-Gen.* v. *Staffordshire C. C.*, *supra*). Whether the only liability as distinct from duty is on the inhabitants of the parish, *quære* (*ibid.*). See further as to the discretion of a highway authority as to the mode of repairing, *Wednesbury Corporation* v. *Lodge Holes Colliery Co., Ltd.*, [1908] A. C. 323; 72 J. P. 417; *R.* v. *Brighton Corporation* (1907), 71 J. P. 265; 96 L. T. 762.

Repair of bridges.

(*g*) The county council have now all the powers formerly exercised by justices in quarter sessions as to the repair of county bridges. See s. 3 (viii.) of this Act. As to the general liability of the county council (as representing the "inhabitants") to repair a county bridge, see *Att.-Gen.* v. *West Riding C. C.* (1903), 67 J. P. 173, and cases cited therewith on p. 273, *ante*. A bridge was partly in Staffordshire and partly in Derbyshire, and by a local Act the expenses of repairing it were to be borne equally by the two county rates. Although by s. 50 of this Act the whole of the bridge became included in Staffordshire, it was held that the local Act remained in force, and both counties were still liable equally (*Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566). If the county council make any alteration in the road so as to cause a nuisance, they will be liable in damages to any person injured thereby: see *Shill* v. *Gloucestershire C. C.* (1893), Times, October 30th. But where the approach to a county bridge had subsided, and the county council proposed to raise it to its original level, it was held that they could not be restrained from doing so at the suit of a frontager, who alleged injury to his property (*Atherton* v. *Cheshire C. C.* (1895), 60 J. P. 6). As to the liability of councils, railway and canal companies and others to repair bridges and "approaches" thereto and fences thereof and in some cases to raise bridges when a subsidence occurs, see cases cited in note (*d*) to the P. H. A., 1875, s. 148, *ante*, p. 271.

For the purpose of repairing main roads the county council have the same right under this section of taking gravel from a pit as a surveyor of highways has (*Norfolk C. C.* v. *Bittering Highway Surveyor* (1894), 58 J. P. 497). See also as to the power of a county council to take materials for repairs under the Highway Act, 1835, ss. 51, 53, *Allinson* v. *Cumberland C. C.* (1907), 71 J. P. 398; 97 L. T. 187.

Removing obstructions to highways.

(*h*) The costs of prosecuting by indictment for obstructing a highway are properly chargeable as part of the cost of maintaining a highway (*R.* v. *Heath* (1865), 2 J. P. 452). JESSEL, M.R., expressed an opinion that the Crown or the conservators of a road had by their agents a right to remove an obstruction, though a private person has no such right if he could pass without doing so, and that in any case a body or person who represented the public would have such a right after judicial determination that there was an obstruction (*Bagshaw* v. *Buxton L. B.* (1875), 1 Ch. D. 224; 40 J. P. 197). But in *Reynolds* v. *Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296, it was held that an urban district council has power to remove encroachments upon any highway within the district vested in them by the P. H. A., 1875, s. 149, without first taking proceedings, either summarily or by way of indict

ment, against the person responsible. And according to the *dicta* in *Louth U. D. C.* v. *West* (1896), 65 L. J. Q. B. 535; 60 J. P. 600, it would appear that this power is exercisable by rural district councils also. Moreover, in *Harris* v *Northamptonshire C. C.* (1897), 61 J. P. 599; 13 T. L. R. 440, it was held that a county council has the like power of removing obstructions without first taking proceedings, apart from any vesting in them of the soil of the road. In the *Louth Case*, *supra*, it was held that the local authority might recover the expenses of removal by action from the person responsible. **Note to Section 11.**

It has been held in Ireland that traction engine traffic which breaks up a road reasonably fit for the ordinary traffic thereof is a public nuisance, and that (apart from statutory provision) a council liable to repair such road can recover the extra cost of repairs as special or particular damage (*Cavan C. C. and Bailieborough R. D. C.* v. *Kane*, [1913] 2 I. R. 250. See also cases on p. 265, *ante*.

(*i*) The highway is prima facie the entire space between the fences which is capable of being used for passage. See and compare the following cases as to the presumption and the conditions to which it is subject: *R.* v. *United Kingdom Telegraph Co.* (1862), 2 B. & S. 647; 31 L. J. M. C. 166; *Turner* v. *Ringwood Highway Board* (1870), L. R. 9 Eq. 418; *Nicol* v. *Beaumont* (1883), 53 L. J. Ch. 853; 50 L. T. 112; *Harris* v. *Northamptonshire C. C.*, *supra*; *Locke-King* v. *Woking U. D. C.* (1897), 77 L. T. 790; 14 T. L. R. 32; *Friern Barnet U. D. C.* v. *Richardson* (1898), 62 J. P. 547; *Neeld* v. *Hendon U. D. C.* (1899), 63 J. P. 724; 81 L. T. 405; *Evelyn* v. *Mirrielees* (1900), 17 T. L. R. 152; *Belmore* (*Countess of*) v. *Kent C. C.*, *infra*; *Att.-Gen.* v. *Esher Linoleum Co.*, [1901] 2 Ch. 647; *Thames Conservators* v. *Dennis* (1902), Times, November 1st; *Pullin* v. *Deffel* (1891), 64 L. T. 134; *Ford* v. *Harrow U. D. C.* (1903), 67 J. P 248; 88 L. T. 394; *Harvey* v. *Truro R. D. C.*, [1903] 2 Ch. 638; 68 J. P. 51; *Plumbley* v. *Lock* (1902), 67 J. P. 237; 19 T. L. R. 14; *Att.-Gen.* v. *Perry*, [1904] 1 I. R. 247; *Offin* v. *Rochford R. D. C.*, [1906] 1 Ch. 342; 70 J. P. 97; *Att.-Gen.* v. *Moorsom-Roberts* (1908), 72 J. P. 123; *St. Ives Corporation* v. *Wadsworth* (1908), 72 J. P. 73; *Leeke* v. *Portsmouth Corporation* (1912), 107 L. T. 260; *Coats* v. *Herefordshire C. C.*, [1909] 2 Ch. 579; 73 J. P. 355; *Copestake* v. *West Sussex C. C.*, [1911] 2 Ch. 331; 75 J. P. 465; *Att.-Gen.* v. *Warren Smith* (1912), 76 J. P. 253; *Att.-Gen.* v. *Lindsay-Hogg*, [1912] W. N. 176; 76 J. P. 450; *East* v. *Berkshire C. C.* (1912), 76 J. P. 35; 106 L. T. 65; *Att.-Gen.* v. *Hemingway*, 81 J. P. 112; 15 L. G. R. 161. It would not ordinarily include an open and unenclosed ditch by the side of it (*Field* v. *Thorne* (1869), 33 J. P. 727; 20 L. T. 563), although there is no rule of law that a ditch running alongside a highway cannot be dedicated as part of the highway, merely because it is not part of the roadway and cannot be used by the public for purposes of passage (*Chorley Corporation* v. *Nightingale*, [1907] 2 K. B. 637; 71 J. P. 441); with the last case compare *Walmsley* v. *Featherstone U. D. C.* (1909), 73 J. P. 322. Nor would it include any part of the unenclosed land adjoining a highway which had never been dedicated as part of the highway though within fifteen feet of the centre of the road (*Easton* v. *Richmond Highway Board* (1871), L. R. 7 Q. B. 69; 36 J. P. 485). And see *Robinson* v. *Cowpen Local Board* (1893), 63 L. J. Q. B. 235; 9 R. 858. As to whether the whole width of a projected road has been dedicated, or only that portion of it as yet reasonably fit for traffic, see *Rowley* v. *Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97. As to the liability of a local authority for the interference by a third party with the right of access to a highway, see *Porter* v. *Tottenham U. D. C.*, [1915] 1 K. B. 776; 79 J. P. 169. The provision in the text appears to imply that the county council will have the same powers over and in respect of roadside wastes between the fences as they have with respect to the rest of the highway; but it is submitted that they have no powers or rights over roadside wastes which do not form part of the highway and which remain private property as before (*Belmore* (*Countess of*) v. *Kent C. C.*, [1901] 1 Ch. 873; 65 J. P. 456). As to the vesting of the roadside wastes in the county council under sub-s. (6), see *Curtis* v. *Kesteven C. C.* in the notes to that sub-section. By the L. G. A., 1894, s. 26 (6), *post*, p. 939, nothing in that section shall affect the powers of the county council in relation to roadside wastes. Width of highways.

(*k*) A general county purpose is one for which the county council are authorised to assess the whole administrative county for contributions (s. 68 (2)).

As to the powers of an arbitrator in dealing with main road expenditure on a

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financial adjustment between a county and county borough, see *Glamorgan C. C.* v. *Cardiff Corporation*, [1915] 3 K. B. 438; 79 J. P. 505.

(2) Provided that any urban authority (*a*) may, within twelve months after the appointed day (*b*), or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district (*c*) of such authority, and thereupon they shall be entitled to retain the same, and, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road (*d*), shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them (*e*), and the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road (*f*).

(*a*) Section 100 defines the expression "urban authority" to mean the district council of an urban county district.

(*b*) The appointed day was April 1st, 1889.

Main roads "retained" by urban authorities.

(*c*) This means the district as constituted for administrative purposes (*Middlesex C. C.* v. *Willesden U. D. C.* (1896), 60 J. P. 630; 12 T. L. R. 437). It would seem that a claim, once made, is irrevocable.

In the case of a newly-formed urban district, the L. G. B. expressed the opinion that the urban district council would have no power under this provision to claim to maintain and repair roads within their district which for a period exceeding twelve months prior to the date of the constitution of the district had been main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878.

Similarly, a town council cannot claim to maintain main roads in an area which has been added to the borough if they were main roads at the date of the extension of boundary.

(*d*) As to these words, see note (*f*) to the preceding sub-section. A district council cannot execute works in a main road unless they have claimed to retain under sub-s. (2), or contracted to undertake, or been required to undertake, under sub-s. (4).

(*e*) In urban districts all streets repairable by the inhabitants at large are vested in the urban sanitary authorities by the P. H. A., 1875, s. 149, *ante*, p. 273. By that section they may cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired, as occasion may require; they may also from time to time cause the soil of any such street to be raised, lowered, or altered, as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers. As to the meaning of the word "vest," see the cases decided with reference to the word as used in the P. H. A., 1875, s. 149, *ante*, p. 277; and see the note to sub-s. (6), *infra*. By the P. H. A., 1875, s. 144, every urban authority has all the powers, duties, authorities, and liabilities of surveyors of highways under the Highway Acts, and all the powers, etc. given by these Acts to the inhabitants of a parish in vestry assembled: see the notes thereto, *ante*, p. 253.

Payments by county council.

(*f*) This provision has given rise to a good deal of discussion. It has been contended that notwithstanding the use of the word "towards," the county council are liable to pay the entire cost, properly incurred, of the maintenance, repair, and reasonable improvement of a main road retained by an urban authority; that, in fact, their liability is no less than it would have been if the road had not been retained but was maintainable and repairable by the county council under sub-s. (1). *In re Wiltshire C. C. and Marlborough Corporation* (1894), 58 J. P. 213, to some extent supported this view. But in *In re Bedfordshire C. C. and Bedford Urban Sanitary Authority*, [1894] 2 Q. B. 786; 58 J. P. 786, MATHEW, J., said: "The legislature plainly contemplated the case ordinarily arising, in which it would not be fair that the whole amount incurred in respect of repair and maintenance should be paid by the county council, although it would certainly be just that some part should

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be cast upon the county council. The Act does not, however, exclude cases where the whole amount of costs incurred might be paid by the county council." See also *Middlesex C. C.* v. *Willesden U. D. C.*, *supra*. The costs towards which the county council are to make payments include the costs of the maintenance and repair of the paved footways at the sides of the road, and of the paved or pitched crossings over the road: see cases cited in note (*f*) to the preceding sub-section. The order in *Warminster L. B.* v. *Wilts C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375, was settled after the judgments by CHARLES, J., and is to the following effect: (1) The county council are liable to make an annual payment towards the cost of the maintenance and repair and reasonable improvement connected with the maintenance and repair of all footpaths by the sides of main roads, whether these are gravelled, paved, asphalted, etc., and whether such footpaths are or are not footpaths which the turnpike trustees were exempted from repairing under 3 Geo. 4, c. 126, s. 112. (2) The county council are under the like liability as to paved or pitched crossings over main roads. (3) The county council are liable to contribute an annual sum towards the cost of scavenging, cleansing, and watering main roads, in so far as such scavenging and cleansing are necessary for maintenance and repair as distinguished from purposes of public health. (4) The county council are under no liability with respect to the lighting of main roads (see sub-s. (11), *post*, p. 745). (5) If the local authority alter the paving or flagging of the footways, as, for instance, by substituting flagging, pavement, wood, or asphalte for gravel or other substance, the county council are bound to make an annual payment in respect of such alteration, in so far as it is a reasonable improvement connected with maintenance and repair, the question whether it is reasonable in any particular case being, in case of dispute, settled by arbitration under sub-s. (3). (6) The county council are not liable to make any payment in respect of the principal or interest of any money borrowed before the passing of this Act; but the court expressed no opinion as to moneys borrowed after that date. In *In re Wiltshire C. C. and Marlborough Corporation* (1894), 58 J. P. 213, the court held that although the whole burden might be cast upon the county council, that council were only bound to discharge their liability in the same way as the urban authority, so that if money was borrowed or capital expenditure incurred by the urban authority, the county council were only bound to pay the instalments, or were entitled to spread the expenditure over a number of years: and it was further held that this sub-section did not forbid the recovery from the county council of expenses defrayed out of borrowed money.

In *Sandgate U. D. C.* v. *Kent C. C.* (1898), 79 L. T. 425, the House of Lords held that the words "annual payment towards the costs of maintenance and repair" mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years. They also held that a local authority under an obligation to keep up a road is chargeable with the cost of works necessary for its preservation, though they may not actually form part of it, such as a sea wall and groynes protecting the road from injury by the sea, and that the existence of a path along the top of the sea wall used as a promenade for pleasure as well as for passage makes no difference to the liability.

The use of the expression "annual payment" does not preclude the county council from making one or more payments "on account," provided that before any such payment is made the council have a favourable report from their surveyor as required by s. 11 (5).

(3) The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may *be determined by arbitration of the Local Government Board.*

See also note (*f*) to sub-s. (2).

Amount of payments: how to be fixed.

By the Local Government (Determination of Differences) Act, 1896, *post*, p. 1002, which seems to have been passed to meet the decision in *In re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456, this and the next sub-sections are to have effect as if for the words printed in italics were substituted the words "be determined

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by the Local Government Board either as arbitrators or otherwise at the option of the Board." It is therefore only where the Board (now the Ministry of Health) determine any difference or other matter as arbitrators that they are obliged to appoint under s. 63, *post*, p. 779, an arbitrator, who may be compelled under the Arbitration Act, 1889, s. 24, to state a case for the opinion of the court. Where the Board determine otherwise than as arbitrators they proceed under s. 87, *post*, p. 782, and this, in fact, is the course usually adopted. As to the finality of their decision where they so decide, see *R.* v. *Local Government Board* (1908), 72 J. P. 211.

By the same Act (s. 2, now repealed as spent), an Order of the Board made before the passing of this Act, and purporting to have been made for the determination of any matter under s. 11 of the Act of 1888, was declared not to be invalid by reason only of the Board having determined the matter as arbitrators or otherwise instead of appointing an arbitrator to determine it.

The L. G. B. have stated, in response to inquiries made of them, that they are willing to entertain applications for their determination of any such dispute as is hereinbefore indicated upon being asked to do so. Any application should be accompanied by (1) a copy of a resolution of each authority formally requesting the Board to determine the differences under the enactment referred to; (2) a statement of facts (in a form supplied by the Board for the purpose) in which both authorities should concur; (3) a map of the district showing by colour the main roads; and (4) a detailed account of the expenditure for the period. As regards any inquiry which would be directed by the Board to be held, it would accord with their practice to require by any Order issued in the matter that the costs (other than the Board's costs) incurred in relation to the inquiry should be borne by the parties by whom such costs had been respectively incurred. As regards their own costs, the Board would not, of course, be in a position to say in advance how they would be charged.

The Board state that it is contrary to their practice to explain the principles which guide them as arbitrators in determining differences as to the cost of main road improvements under the L. G. A., 1888, s. 11, as amended by the Act of 1896.

No great delay should be allowed to occur in bringing a dispute before the Ministry of Health. In the Local Government Board's Annual Report for 1906—1907 a case is referred to in which they were asked to deal with differences which had arisen as long ago as 1899. The town council had given receipts "on account," in acknowledgment of the contributions made by the county council, with the intention of eventually submitting the equity of certain deductions which had been insisted on by the county council to arbitration under the Act. The Board decided in this case to investigate the figures for three years only.

The L. G. B. would not undertake to settle a dispute as to whether a particular road was a main road or not.

The High Court has no jurisdiction to determine the question of amount under this sub-section (*In re Bedford Urban Sanitary Authority*, [1894] 2 Q. B. 786; 58 J. P. 786).

An agreement made under this sub-section requires a 10*s.* stamp (*Cumberland C. C.* v. *Inland Revenue Commissioners* (1898), 62 J. P. 407; 78 L. T. 679; and see *Southampton C. C.* v. *Inland Revenue Commissioners* (1905), 69 J. P. 105).

Contracts between county and district council.

(4) The county council and any district council (*a*) may from time to time contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road (*b*), and, if the county council so require, the district council shall (*c*) undertake the same, and such undertaking shall be in consideration of such annual payment (*d*) by the county council for the costs of the undertaking as may from time to time be agreed upon, or in case of difference, *be determined by arbitration of the Local Government Board* (*e*); and for the purposes of such undertaking the district council shall have the same powers and be subject to the same duties and liabilities as if the road were an ordinary road vested in them (*f*).

(*a*) *I.e.* Any urban or rural district council. See s. 100, *post*, p. 785.

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(*b*) As to the meaning of maintenance, etc., see note (*f*) to sub-s. (1), p. 737, *ante*. This contract may apparently be for a term of years, a year, or a less period. An agreement under this sub-section between a county council and a highway authority does not take away from the former their rights and liabilities as the "road authority" under the Tramways Act, 1870 (*Stockport and Hyde Highway Board* v. *Cheshire C. C.* (1891), 61 L. J. Q. B. 22; 55 J. P. 808).

An agreement made under this sub-section requires a 10*s.* stamp (*Southampton C. C.* v. *Inland Revenue Commissioners* (1905), 69 J. P. 105; and see *Cumberland C. C.* v. *Inland Revenue Commissioners* (1898), 62 J. P. 407; 78 L. T. 679).

The Highways and Bridges Act, 1891, in App. I., *post*, Vol. II., contains further provisions enabling county councils and highway authorities to make agreements for the improvement, etc., of main roads, highways and bridges.

(*c*) The highway authority have no option, if required by virtue of this provision to undertake the maintenance, etc., of main roads. They must maintain and repair out of the funds in their hands for the repair of highways in their district, and the payments made to them by the county council will be paid into the same fund.

(*d*) See note (*f*) to sub-s. (2).

(*e*) See the notes to the preceding sub-section.

(*f*) A highway repairable by the inhabitants at large, if in an urban district, is vested in the urban authority; see sub-s. (2), note (*e*), *ante*, p. 740. But save in this case, a highway does not vest in a highway authority, and the words "vested in them" must here be read as equivalent to "subject to their control."

An urban authority is not liable to be indicted at common law for non-repair of a highway (*R.* v. *Poole* (*Corporation*) (1887), 19 Q. B. D. 602; 52 J. P. 84). But they may be indicted under the Highway Act, 1878, s. 10 (*R.* v. *Wakefield Corporation* (1888), 20 Q. B. D. 810; 52 J. P. 422).

(5) Provided that in no case shall a county council make any payment to a district council towards the costs of such undertaking as respects any road, or towards the costs of the maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed.

Proviso as to proper maintenance.

This refers both to an undertaking under sub-s. (4), and to the maintenance of main roads by an urban authority under sub-s. (2). As to the procedure in case of refusal to make a payment under this sub-section, see sub-s. (9), *post*, p. 745.

(6) A main road and the materials thereof, and all drains belonging thereto (*a*), shall, except where the urban authority retain the powers and duties of maintaining and repairing such road (*b*), vest in the county council (*c*), and where any sewer or other drain is used for any purpose in connexion with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act (*d*).

Vesting of main roads and drains.

(*a*) A drain, which upon the facts was held to have been a drain under the control of the highway authority prior to the passing of the P. H. A., 1875, and not to have

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been vested in the local authority under that Act, and which was held, under the present provision, to be vested in the county council as being a drain "belonging to a main road," is not divested out of the authority having control of the main road and vested in the local authority as being a "sewer" because a connection has been made without the knowledge of either authority between a house and the drain. The owners and occupiers of the house having brought an action for damages caused by the flooding of the cellars of the house against the local authority, and not against the county council, it was held, that the defendants were not liable and that the action failed (*Rickarby* v. *New Forest R. D. C.* (1910), 74 J. P. 441; 26 T. L. R. 586).

(*b*) This refers to sub-s. (2), *ante*, p. 740. Where the urban authority retain the right of repairing, the road will remain vested in them as formerly: see sub-s. (2), note (*e*), *ante*, p. 740.

(*c*) See the cases decided with reference to the meaning and effect of the word "vest" as used in the P. H. A., 1875, s. 149, *ante*, p. 277.

Roadside wastes.

A main road was 3,746 yards long; the metalled part of the road was of a uniform width of 22 feet; the total width of the road, including the waste on each side from hedge to hedge, varied from 65 to 95 feet. The unmetalled portion was covered with grass, timber, and other growths. C., the plaintiff, was tenant for life of the manor, which included the waste land adjoining the highways in the parish. The strips of land adjoining the highways were let annually by the plaintiff to cottagers, two of whom were also plaintiffs. The defendants, the country council, contended that the strips were vested in them by the provisions of the text, and they let the herbage to L., a co-defendant. The plaintiffs claimed a declaration that C. was seised in fee of the strips, and entitled to the herbage, trees, and other growths thereon, and for an injunction restraining the defendants from cutting or removing the grass, trees, or other growths. NORTH, J., held that the strips in question were "roadside wastes" within the meaning of sub-s. (1), but were not vested in the county council by the text, and he granted the injunction claimed without prejudice to the council's rights under the Act (*Curtis* v. *Kesteven C. C.* (1890), 45 Ch. D. 504).

(*d*) Arbitration in manner provided by this Act is regulated by s. 62 (2) and (3), *post*, p. 778.

Declaration as a main road.

(7) Where a county council declare a road to be a main road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

This provision is in effect an amendment or proviso to the Highways and Locomotives (Amendment) Act, 1878, s. 15, for which see App. I., Vol. II., *post*. As to arbitration, if dispute arises as to the condition of the road, see sub-s. (9), *infra*.

Notice by county council to district council to repair.

(8) If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council, is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper repair and condition, and the expenses of so doing shall be a debt of the said district council to the county council.

This provision applies only to main roads of which the repair has been undertaken under sub-s. (4), and not to main roads repaired by an urban authority under sub-s. (2). As to the method of determining cases of dispute under this sub-section, see the next sub-section.

The expenses incurred, being made a debt, will be recoverable by action in the High Court, or in the county court if less than £100. See note (*a*) to the P. H. A., 1875, s. 284, *ante*, p. 619.

(9) If any difference arises under this section between a county council and a district council as to the refusal of the county council to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a main road, or as to any notice given to the district council by the county council to place a road in proper repair and condition, such difference shall, if either council so require, *be referred to the arbitration of the Local Government Board.*

Determination of differences.

In this sub-section, for the words printed in italics must now be substituted under the Local Government (Determination of Differences) Act, 1896, *post*, p. 1002, the words "be determined by the Local Government Board as arbitrators or otherwise at the option of the Board." For the effect of this alteration, see note to sub-s. (3), *ante*, p. 741.

The differences referred to are those which may arise under sub-ss. (5), (7), (8).

(10) The county council may, if they think fit, contribute towards the costs of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main road.

Contribution by county council to other highways.

As to the meaning of the words "maintenance, repair, enlargement, and improvement," see note (*f*) to sub-s. (1).

The text uses the words "highway or public footpath," but a public footpath is to all intents and purposes a highway, and is repairable like any other highway: see *per* LORD ELLENBOROUGH, C.J., in *R.* v. *Salop* (1810), 13 East, at p. 97.

The contribution under this sub-section may be made subject to any such conditions for the proper maintenance and repair of such highway as may be agreed on between the county council and the highway authority: see the L. G. A., 1894, s. 25 (3), *post*, p. 935.

See further as to agreements between county councils and highway authorities in relation to the construction, improvement, etc., of highways, s. 3 of the Highways and Bridges Act, 1891, in App. I., *post*, Vol. II.

(11) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main road in their district.

Lighting of main roads.

The result of this provision is that the county council are not liable to light the main roads in any case. In urban districts the power devolves on the urban authority under the P. H. A., 1875, ss. 161, 162, *ante*, pp. 364, 367. They may under these sections contract for the supply of gas or other means of lighting the street, and if there is no company having statutory powers in their district they may themselves provide a supply of gas for public or private purposes. In the latter case they may obtain a Provisional Order under the Gas and Water Works Facilities Acts or a special order under the Gas Regulation Act, 1920, s. 10, *post*. They may also purchase the undertaking of any gas company in their district. See the notes to the sections referred to.

In rural districts, unless urban powers have been obtained by the rural district council by Order of the L. G. B. under the P. H. A., 1875, s. 276, *ante*, p. 613, the power of lighting roads devolves ordinarily on the parish council under the Lighting and Watching Act, 1833, if that Act has been adopted. See the L. G. A., 1894, ss. 7, 53, in this connection.

Under the Electric Lighting Acts, 1882 to 1909, which are set out in Appendix I., *post*, Vol. II., an urban or rural district council might obtain a licence or provisional Order for the supply of electricity for public or private purposes. But see now the provisions of the Electricity (Supply) Act, 1919, which is also set out, *post*.

Section 11.

Breaking up main roads.

(12) Anything authorised or required by law to be done by or to a highway or road authority shall, as respects a main road maintained by a county council, be authorised or required to be done by or to that council (*a*); and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any main road in their district (*b*), but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council (*c*).

(*a*) This provision apparently confers upon a county council all the powers and liabilities of a highway surveyor or a highway board for the purposes of main roads.

(*b*) A sanitary authority may lay sewers and water mains in any road, and may break up roads for that purpose (P. H. A., 1875, ss. 16, 32, 54, *ante*, pp. 55, 94, 128). Among other authorities who may break up roads may be mentioned water companies under the Waterworks Clauses Act, 1847, ss. 28—34; gas companies under the Gasworks Clauses Act, 1847, ss. 6—12; tramway companies under the Tramways Act, 1870, ss. 26, 27, 30; electric lighting companies under the Electric Lighting Act, 1882, ss. 12, 13. All these Acts are set out in App. I., Vol. II. The provisions of the text as to the reinstating of the roads are in addition to those contained in those Acts.

(*c*) See the note to sub-s. (8), *ante*, p. 744.

Repair of main roads out of hundred rates.

(13) Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section.

The 41 & 42 Vict. c. 77, s. 20, is as follows:—"Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their district to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged."

The following is an extract from a letter, dated September 18th, 1878, from the L. G. B. with reference to this section: "The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate."

By virtue of this provision as applied by the text the expenses of maintaining main roads may be made payable out of the hundred rate instead of the county rate, wherever 41 and 42 Vict. c. 77, s. 20, is in operation. The hundred rate is

made and levied by the county council under s. 3 (i). It appears, however, that the expense of main roads in counties to which this section applies is a "general county purpose" (*R.* v. *Dolby*, [1892] 2 Q. B. 736). **Note to Section 11.**

12.—(1) *After the appointed day*, tolls shall cease to be taken on any road maintained and repaired by the Isle of Wight Highway Commissioners, under the Isle of Wight Highway Acts, 1813 and 1883, and *after such day* the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to the Isle of Wight, and to every such road above mentioned, in like manner as if it were ceasing within the meaning of the said Act to be a turnpike road, *and the Act of the session of the forty-fourth and forty-fifth years of the reign of her present Majesty, chapter seventy-two, shall be repealed.* Roads and tolls in Isle of Wight.

Italicised words repealed by the S. L. R. A., 1908.

The highways in the Isle of Wight are regulated by 53 Geo. 3, c. xcii. and 46 & 47 Vict. c. ccxxvi. The Isle of Wight was exempted from the operation of the Highway Acts by 5 & 6 Will. 4, c. 50, s. 113; 25 & 26 Vict. c. 61, s. 7; 41 & 42 Vict. c. 77, ss. 2, 27; 44 & 45 Vict. c. 72. The text repeals the last-mentioned Act, which exempted the Isle of Wight from liability to contribute towards the county rate for the expenses of main roads. This exemption is now taken away, and the roads in the island are repairable as main roads, subject to the proviso contained in the next sub-section.

(2) Until provision is otherwise made by Parliament, or by a Provisional Order confirmed by Parliament (*a*), the repair and maintenance of the said roads shall continue to be undertaken by the said commissioners (*b*), and the county council for the county of Southampton shall pay such commissioners, in respect of the said repairs and maintenance (*c*), and of the expenses of the commissioners, such sums as may be agreed upon, or, in case of difference, be settled by arbitration under this Act (*d*), and the provisions of this Act with respect to main roads shall apply as if the commissioners were a district council who had undertaken the maintenance and repair of such road (*e*).

(*a*) In 1889 the Isle of Wight was made a separate administrative county of itself by Provisional Order confirmed by 52 & 53 Vict. c. lxxvii. Article 21 of that Order provides for the substitution of the county council of the Isle of Wight for that of the county of Southampton in the text.

(*b*) The commissioners were the Isle of Wight Commissioners mentioned in the preceding sub-section, appointed under 46 & 47 Vict. c. ccxxvi., ss. 5—15. These commissioners were abolished by the L. G. A., 1894, s. 25, *post*, p. 933, and their duties under this section were transferred to the rural district council (*In re Isle of Wight Highway Commissioners* (1895), 59 J. P. 438; 72 L. T. 569).

(*c*) The words "improvement, enlargement of, and other dealing with" are omitted here. As to the meaning of the term "maintenance," see note (*f*) to s. 11 (1), *ante*, p. 737.

(*d*) As to arbitration under this Act, see s. 62, *post*, p. 775. It is to that section and not to s. 11 (4), *ante*, p. 742, that reference is here made (*Re Isle of Wight R. D. C. and Isle of Wight C. C.* (1900), 65 J. P. 87).

(*e*) See s. 11 (2), *ante*, p. 740. The language of this sub-section is very inaccurate. In the first place, the county is only to pay for repair and maintenance; in the second place, the arbitration is "under this Act," not by the M. of H.; so that s. 11 (2) differs in both these particulars.

13.—(1) *After the appointed day* no county road rate shall be levied and tolls shall cease to be taken on any road maintained and repaired by a county roads board in South Wales, in pursuance of the South Adaptation of Act to South Wales roads.

Section 13.

Wales Turnpike Trusts Act, 1844, and the Acts amending the same, and *after such day* the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act shall apply to every county in South Wales as if the Highway districts in that county had been constituted under the Highway Act, 1862, and the Highway Act, 1864, or one of those Acts, and shall apply to every such road as above mentioned, in like manner as if it were ceasing, within the meaning of the said Act, to be a turnpike road.

Italicised words in both sub-sections repealed by the S. L. R. A., 1908.

By 7 & 8 Vict. c. 91, in each of the six counties of South Wales—namely, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan—a "county roads board" was appointed, consisting of from six to twelve justices appointed by quarter sessions and certain *ex-officio* members, to have the superintendence, control, and management of all turnpike roads in the county. They had power to continue existing toll gates and to erect others and to take tolls. They might discontinue tolls on any road, and thereupon such road became an ordinary highway. By the same Act the commissioners who were appointed by the Act "for consolidating and adjusting the turnpike trusts of South Wales" might mark out and define in each county, districts which, subject to the superintendence and authority of the county roads board, should be placed under the care and management of "district roads boards." The members of these district boards were originally nominated by the commissioners out of persons possessing a prescribed qualification, all justices residing within the district being *ex-officio* members; vacancies were from time to time filled up by the board, the elected members retiring by rotation. The officers of the district boards were appointed by the county roads board. The duties of a district board were to direct and superintend all matters and things relating to the maintaining, repairing, and draining of the turnpike roads in the district, and the execution of any work or improvement placed under their direction and superintendence by the county roads board. Each district board annually elected two members to serve on the county roads board. The tolls received were paid into the county roads fund, and if that were insufficient for the expenses payable out of it, the quarter sessions had to make a county road rate to supply the deficiency.

By 14 and 15 Vict. c. 16, the county roads board of each county was required to divide the county into highway districts for the separate management of the ordinary highways therein. For each district a highway board was to be appointed, consisting of the guardians elected for each parish in the district and the resident justices. The Act was repealed by 23 & 24 Vict. c. 68, but the repeal did not affect existing districts. The county roads board were empowered to alter districts and appoint surveyors for each district. All land or property which would otherwise have become vested in the surveyor of any parish under 5 & 6 Will. 4, c. 50, was transferred to the highway board, which took over the care and management of the ordinary highways. The expenses of maintenance, etc. were chargeable to each parish and levied by a highway rate. Subject to the provisions of the Act and later amending Acts, the 5 & 6 Will. 4, c. 50, applies to ordinary highways in South Wales.

This section abolishes county roads boards, and makes the roads formerly repairable by them main roads. Consequently they are now repairable by the county council under the provisions of s. 11, *ante*, p. 736, and that section will apply in all respects as if these roads had been main roads under the Highway Act of 1878.

The effect of s. 25 of the L. G. A., 1894, was that highway boards in South Wales were superseded by rural district councils.

(2) *On the appointed day* every county roads board and district roads board (*a*) in each county shall cease to exist, and the property, debts, and liabilities of any such board shall be transferred to the county council, and that council shall be the successors of the county and district roads boards, and the provisions of this Act, with respect to the

transfer of the property, debts, and liabilities of quarter sessions to county councils, and with respect to the officers and servants of quarter sessions (*b*), shall apply as if they were herein re-enacted and made applicable to the property, debts, liabilities, and officers of the said county and district roads boards. Section 13.

(*a*) See the note to the preceding sub-section.

(*b*) The provisions of the Act as to transfer of debts, etc., and with respect to officers, are outside the scope of the present Work. The reader will find these provisions in the separate Work on the L. G. A., 1888, by Macmorran and Dill.

(3) For the following purposes (that is to say):

(a) For giving effect to the said transfer of the property, debts, and liabilities, and for controlling the officers and servants transferred by this section to the county council, and otherwise winding up the affairs of the county and district roads boards; and

(b) For the purpose of the appointment of the surveyor of a highway board, the alteration of a highway district, and other purposes relating to highway boards;

the county council of every county in South Wales shall have all the powers of a county roads board in a county under the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, so, however, that nothing shall confer on the county council any power to levy any toll or county road rate.

See generally the notes to sub-s. (1) of this section.

14.—(1) *On and after the appointed day* (*a*) a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained) (*b*), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district (*c*). Power to county council to enforce provisions of Rivers Pollution Prevention Act, 1876.

(*a*) Repealed by the S. L. R. A., 1908. The appointed day was April 1st, 1890 (s. 109). A county borough council is a county council for this purpose.

(*b*) The full text of this Act is set out in App. I., *post*, Vol. II.

(*c*) Parts I. and II. of the Rivers Pollution Prevention Act, 1876, relate to pollution of streams by solid matters and sewage. Part III. deals with manufacturing and mining pollution. By s. 6 proceedings shall not be taken under Part III. save by a sanitary authority and with the consent of the L. G. B. If the sanitary authority, on the application of a person interested, refuse to take proceedings, such person may apply to the L. G. B., who, after inquiry, may direct the sanitary authority to take proceedings. The Board are not to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures, are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. Any person against whom proceedings are proposed to be taken under Part III. of the Act, notwithstanding any consent of the L. G. B., Effect of the Rivers Pollution Prevention Act.

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may object before the sanitary authority to such proceedings being taken, and the authority must if required in writing by such person afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The authority must thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority must determine, having regard to all the considerations to which the L. G. B. are by the section directed to have regard, whether such proceedings shall be taken or not. When any authority has taken proceedings under the Act, no other sanitary authority may take proceedings under the Act, until the party against whom the proceedings are intended has failed in reasonable time to carry out the order of any competent court under the Act. By s. 8, every sanitary authority, subject to the restrictions in the Act, have power to enforce the provisions of the Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against the Act which causes interference with the due flow within their district of any stream or the pollution within their district of any stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority. By s. 13, two months' notice of proceedings under the Act must be given. In the section above quoted the Ministry of Health must now be substituted for the L. G. B.

The text enables a county council to institute proceedings under the Act, in all cases in which a sanitary authority could do so, and, of course, they can institute proceedings against any sanitary authority in respect of sewage pollution.

Proceedings against a sanitary authority are facilitated by the Rivers Pollution Prevention Act, 1893, *post*, Vol. II., which provides that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall for the purposes of the Act of 1876 be deemed knowingly to permit the sewage matter so to fall, flow, or be carried. See also the P. H. A., 1875, s. 17, *ante*, p. 60, and notes.

(2) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

Proceedings under the Act.

Proceedings under the Rivers Pollution Prevention Act, 1876, are instituted in the county court, subject to power to remove them into the High Court in certain cases (s. 10). Though the powers given by the Act are cumulative, and do not affect other remedies, *e.g.*, by way of indictment or injunction (s. 16), yet the action in the county court seems to be the only proceeding which can be called "a prosecution under the said Act." It should be added that if default is made in complying with any order of the county court, a penalty not exceeding £50 a day may be imposed, and such penalty is recoverable as a judgment debt (s. 10).

Although the sub-section speaks of a *prosecution*, proceedings in the county court for an order under the Act of 1876 are not of a criminal or penal nature, and interrogatories may be allowed (*Derby Corporation* v. *Derbyshire C. C.*, [1897] A. C. 550).

(3) The Local Government Board, by Provisional Order (*a*) made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order (*b*); and the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers.

(*a*) A Provisional Order is made under s. 87 of this Act, *post*, p. 782.

Note to Section 14.

(*b*) The powers of a county council under sub-s. (1) are limited to their county. The text enables a joint authority to be appointed for several counties, so as to constitute one authority for an entire river and its tributaries, and that body may, therefore, prevent the pollution of a river at any point of its course.

Joint committees and rivers boards.

By a Provisional Order made under this sub-section and duly confirmed by Act of Parliament, the L. C. B. created a joint committee with power to prevent the pollution of the rivers Mersey and Irwell or the tributaries thereof. At the date of this Order the Manchester Ship Canal was in course of construction, and it was held that after the canal was completed it was included under the words "the rivers Mersey and Irwell or the tributaries thereof" (*Mersey and Irwell Watershed Joint Committee* v. *Salford Corporation* (1895), Times, May 17th).

There are only two other joint rivers committees at present—the Ribble Joint Committee and the West Riding of Yorkshire Rivers Board.

The powers of the latter board and of the Mersey and Irwell Joint Committee were somewhat modified and enlarged by the West Riding of Yorkshire Rivers Act, 1894, and the Mersey and Irwell Joint Committee Act, 1892, respectively.

Proposed "central authority."

In the third report of the Royal Commission on Sewage Disposal, the commissioners, after recommending the creation of a central authority to determine differences between local authorities and manufacturers in the matter of the disposal of trade refuse and to secure the protection of rivers and other sources of water supply from pollution, advocate the formation of rivers boards throughout the country. The following is an extract from the report:

"Although the rivers boards are merely joint committees of county councils, and therefore only possess for the combined areas the same powers which the individual councils might have exercised in their respective districts, we are satisfied that such combinations are of much greater value for the protection of rivers and streams than the separate councils acting independently.

"In the first place, they are bodies expressly created for enforcing the provisions of the Rivers Pollution Prevention Act, whereas the separate county council is under no obligation to enforce these provisions. And we find as a fact that in many counties outside the areas represented by the existing rivers boards, little or nothing is done by the county council to exercise its powers of checking river pollution.

"Then, too, a rivers board has jurisdiction over practically the whole of a watershed. This is a point of considerable importance.

"It has been again and again pointed out by previous Commissions that to obtain effective action there should be some one authority with power to deal in each instance with the whole watershed, and we entirely concur in this view.

"Another advantage of combination is that the area under the jurisdiction of a rivers board is sufficiently large to secure the appointment of skilled officers.

"We have not sufficient information to enable us to say what precise combinations should be made. Each rivers board district should however include, as far as practicable, the whole of one or more watersheds, and it should be sufficiently large to justify the permanent appointment of a skilled chief inspector at an adequate salary.

"One of the first duties of the central authority will be to ascertain what grouping of counties would be most effective, and then to take steps to constitute rivers boards for these areas."

As to rivers partly in England and partly in Scotland, see the Rivers Pollution (Border Councils) Act, 1898, in App. I., *post*, Vol. II.

* * * * *

Power of county councils to appoint medical officer of health.

17.—(1) The council of any county may, if they see fit, appoint and pay a medical officer of health, or medical officers of health (*a*), *who shall not hold any other appointment or engage in private practice without express written consent of the council.*

(2) *The county council and any district council may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district council,*

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on such terms as to the contribution by the district council to the salary of the medical officer, or otherwise, as may be agreed, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by a district council (*b*).

(3) *So long as such an arrangement is in force, the obligation of the district council under the Public Health Act,* 1875, *to appoint a medical officer of health shall be deemed to be satisfied without the appointment of a separate medical officer* (*b*).

(*a*) The italicised portion of this section was repealed by the Housing, Town Planning, etc. Act, 1909. Section 68 of that Act made the appointment of a medical officer by a county council obligatory. As to the appointment, powers, and duties of such officers, see that section and s. 69 and the notes thereto. See also the amending provisions in the Housing Act, 1919, Sched. 2.

(*b*) The power to make such an arrangement as was contemplated by sub-ss. (2) and (3) was determined—without prejudice to existing arrangements—by the Housing, Town Planning, etc. Act, 1909, s. 68 (2). The L. G. B. had come to view such arrangements with disfavour. "There are," they had said, "many and marked objections to the same person holding the offices of county and district medical officer of health, seeing that in the former capacity he may be placed in a position in which he should criticise his proceedings in the latter capacity. A county council has power under the Act to make a representation to the Board on matters arising out of the reports of local medical officers of health, and in doing so they usually act on the advice of their own medical officer of health. If, however, their medical officer of health is acting as a local medical officer of health for several sanitary districts, he is obviously not in such a position of independence as is desirable with a view to the county council obtaining from him thoroughly impartial and disinterested advice. Hence it is desirable that where possible the county medical officer of health should be entirely independent of similar local appointments. But the Board's experience is that in the smaller counties where there is not sufficient work to occupy the whole time of a county medical officer of health the county council may properly arrange for him to act as medical officer of health for one or two district councils. The general objections above pointed out would apply to these appointments, no doubt, but the balance of advantage may be regarded as in favour of such appointments being made in the circumstances indicated. The Board do not think the principle could with advantage be extended to the larger counties."

Qualification of medical officers of health.

18. Except where the Local Government Board, for reasons brought to their notice, may see fit in particular cases specially to allow, no person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery.

The P. H. A., 1875, s. 191, *ante*, p. 454, simply required that a medical officer of health should be a legally qualified medical practitioner, *i.e.*, simply a person registered under 21 & 22 Vict. c. 90. A person might, before June 1st, 1887 (when the 49 & 50 Vict. c. 48, came into operation) have been registered, though qualified for the practice of medicine only, or of surgery only. A medical officer of health must now possess the triple qualification, unless the Ministry of Health grants a special dispensation, and this cannot be done in cases falling within the next sub-section. See also as to the appointment and tenure of medical officers of health, the Public Health (Officers) Act, 1921, 11 & 12 Geo. 5, c. 23, *post*. See also as to county medical officers, the Order of July 29th, 1910, in App. II., Vol. II., *post*.

A "county district" is an urban or rural district. See s. 100, *post*, p. 785.

The same medical officer may be appointed for two or more districts under the P. H. A., 1875, s. 191, with the sanction of the Ministry of Health; and by s. 286 the L. G. B. (now the M. of H.) may, by Order, unite two or more districts in the

same county for the purpose of appointing a medical officer of health. The same section provides that in case of illness or incapacity of the medical officer of health, a local authority may appoint and pay a deputy medical officer, subject to the approval of the Ministry.

Note to Section 18.

(2) No person shall *after the first day of January one thousand eight hundred and ninety-two* be appointed the medical officer of health of any county (*a*) or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of fifty thousand or more inhabitants (*b*), unless he is qualified as above mentioned (*c*), and also either is registered in the medical register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886 (*d*), or has been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts, with a population according to the last published census of not less than twenty thousand, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board (*e*).

Italicised words repealed by the S. L. R. A., 1908.

(*a*) The medical officer of a county is appointed under s. 17, *ante*, p. 751, and the Housing, Town Planning, etc. Act, 1909, s. 68, *post*, Vol. II.

(*b*) The districts here referred to are the county districts mentioned in sub-s. (1), *i.e.*, urban and rural sanitary districts having a population of 50,000 or upwards.

(*c*) See sub-s. (1), *supra*.

(*d*) The 49 & 50 Vict. c. 48, s. 21, provides that every registered medical practitioner to whom a diploma for proficiency in sanitary science, public health, or State medicine has, after special examination, been granted by any college or faculty of physicians or surgeons, or university, in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council, or to the General Council, to deserve recognition in the medical register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered.

(*e*) The medical officer of health of the Ministry of Health is appointed under 21 & 22 Vict. c. 97, s. 4 ; 34 & 35 Vict. c. 70. Inspectors are appointed under 10 & 11 Vict. c. 109, s. 19, and 34 & 35 Vict. c. 70, s. 2 (see this Act in App. I., *post*, Vol. II.).

Power of county council as to report of medical officer of health.

19.—(1) Every medical officer of health for a district in any county shall send to the county council a copy of every periodical report of which a copy is for the time being required by the regulations of the Local Government Board to be sent to the Board, and if a medical officer fails to send such copy the county council may refuse to pay any contribution, which otherwise the council would in pursuance of this Act pay, towards the salary of such medical officer.

Under the orders made by the L. G. B. relating to medical officers of health, every medical officer is required to make an annual report to the end of December in each year, and a copy of such report is sent to the Ministry of Health. See these orders in App. II., *post*, Vol. II. In future a copy of every such report must be sent to the county council, otherwise the contribution which that council would have to make under s. 24 (2) of this Act towards the salary of the officer may be withheld.

(2) If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the

Section 19. district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter.

This representation is not equivalent to a complaint under the P. H. A., 1875, s. 299, *ante*, p. 632, so as to enable the Board (now the Ministry of Health) to compel the defaulting authority to perform the duty in which it has made default, and some county councils have found it more satisfactory to make a formal complaint under the Act of 1875. Under it the Ministry, if satisfied of the alleged default after due inquiry, may make an order on the local authority for the performance of their duty, and enforce this order by *mandamus*, or appoint a person to perform the duty and recover the expenses from the local authority.

A further remedy for the enforcement of the Public Health Acts in *rural* districts is provided by ss. 16 and 19 (8) of the L. G. A., 1894, *post*, pp. 920, 923.

* * * * * *

Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

24. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (*a*) (in this Act referred to as local grants) will by reason of the duties on the local taxation licences (*b*) and the probate duty grant (*b*) being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows:

(1) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed *as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day* (*c*).

Italicised words repealed by the S. L. R. A., 1908.

(*a*) These local grants were made out of funds provided by Parliament. They are no longer made.

Later provisions.

(*b*) The "local taxation licences" are enumerated in Sched. I. to this Act. The duties thereon were formerly excise duties, but s. 20 of this Act directed the commissioners of Inland Revenue to pay the proceeds into the Local Taxation Account at the Bank of England. The amount collected in each county was to be certified by the commissioners, and paid out under the direction of the L. G. B. to the council of that county. As to the payment into the local taxation account of the duties on motor-cars, etc., the fees for licences and the penalties and forfeitures payable under the Acts relating to mechanically propelled vehicles, see the Roads Act, 1920, 10 & 11 Geo. 5, c. 72, and the Road Vehicles (Registration and Licensing) Order, 7th February, 1921, *post*. The Locomotives on Highways Act, 1896, 59 & 60 Vict. c. 36, s. 8, imposed certain excise duties on light locomotives, and provided that every such duty should be paid together with the duty on the licence for the locomotive as a carriage or a hackney carriage, and should be dealt with in manner directed with respect to duties on local taxation licences within the meaning of the L. G. A., 1888. As to the "Probate Duty Grant," see s. 21 of this Act, which directed the commissioners of Inland Revenue to pay into the Local Taxation Account four-fifths of one-half of the proceeds of the sums collected by them in respect of the probate duties. The sum so paid in was to be distributed among the councils of the several counties in England and Wales in proportion to the share certified by the L. G. B. to have been received by each county in the financial year ending March 31st, 1888, out of the grants theretofore made out of the Exchequer in aid of local rates. The Finance Act, 1894, s. 19, provided that in substitution for this grant out of the probate duties, there should be paid out of the proceeds of the estate duty derived from personal property, such sum as the commissioners, in accordance with the regulations made by the Treasury under this Act, might determine to be an amount equal to 1½ per cent. on the net value of such of the property in respect of which estate duty is leviable, as would, if that Act had not passed, have been chargeable

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with the duty imposed by s. 27 of the Customs and Inland Revenue Act, 1881, on inland revenue affidavits, and this Act was to apply as if the sums so determined were the probate duty grant or one-half of the proceeds of the sums collected in respect of the probate duties (as the case required) within the meaning of this Act. Subsequent statutes made provisions for further payments into the Local Taxation Account, viz., s. 7 of the Customs and Inland Revenue Act, 1890 (" the local taxation (customs and excise) duties "); s. 2 of the Agricultural Rates Act, 1896 (a further portion of the proceeds of estate duty earmarked for purposes of that Act); and s. 4 of the Licensing Act, 1904 (monopoly value payments on the grant of new licences). On the other hand, a portion of the proceeds of the estate duty which would otherwise have been payable to the Local Taxation Account, was diverted from the account by the Tithe Rent-charge (Rates) Act, 1899, for the purpose of making good the deficiency on certain rates caused by the partial exemptions conferred by that Act; and any deficiency upon the cattle pleuro-pneumonia account must be provided for under s. 18 (2) of the Diseases of Animals Act, 1894. The Finance Act, 1907, 7 Ed. 7, c. 13, s. 17, contains provisions dealing with certain specified grants, viz., (1) the estate duty grants paid under s. 19 of the Finance Act, 1894, *supra*, and (2) the agricultural rates grant paid under s. 2 of the Agricultural Rates Act, 1896. It provides that the said grants instead of being charged in manner provided by the Acts relating to these grants shall be charged on and paid out of the Consolidated Fund. Section 17 of the Act of 1907 further provides that the proceeds of the local taxation (customs and excise) duties and of the duties on local taxation licences (including any duty charged under the Locomotives on Highways Act, 1896, s. 8, (1)) payable under any Act in force into any local taxation account, shall, instead of being paid into that account be paid into the exchequer, and that there shall be paid into any such local taxation account out of the Consolidated Fund a sum equal to the amount which would have been paid into that account as the produce of the duties if the Act had not passed. (See the Act in extenso in App. I., *post*, Vol. II.). The Finance Act, 1908, 8 Ed. 7, c. 16, contains provisions relating to the duties on licences to deal in game, licences for dogs, killing game, guns, carriages (including duties charged under the Locomotives on Highways Act, 1896, s. 8 (1), armorial bearings and male servants. The power to levy such duties was transferred to county councils, and from the date of the transfer s. 17 of the Act of 1907, *supra*, was no longer to apply to them. And it was provided that s. 20, sub-ss. (3) (4) and (5), of the L. G. A., 1888, and any other provisions of that Act relating to the levy of the duties on local taxation licences by county councils should, as respects the licences to which the section applies, have effect as if the power to levy those duties had been transferred under s. 20 (3) of that Act. After the transfer there was to be charged on and paid annually out of the Consolidated Fund to the local taxation account a sum of £40,000, which sum was to be distributed among county councils in proportion to the proceeds of the duties in question collected in each county during the preceding year. (This Act is also set out in extenso in App. I., *post*, Vol. II.). The Finance Act, 1910, 10 Ed. 7, c. 8, s. 88, provided that for the purpose of the Finance Act, 1907, s. 17 (3) the proceeds of the duties on licences for the sale of intoxicating liquor and on licences for motor cars imposed by that Act, should so far as respects the sums to be paid into any local taxation account out of the Consolidated Fund be deemed to be the amount of the proceeds of the duties on those licences during the year ending March 31st, 1909. It further provided that, notwithstanding the provisos to s. 6 (4) of the Act of 1908, the duties on licences for motor cars should continue to be duties to which that section applies, but that any sum by which the proceeds of those duties levied in any financial year by the council should exceed the amount of the proceeds of those duties certified by the L. G. B. to have been collected in that county or county borough during the year ending March 31st, 1909, should be paid into the Exchequer, and that a council should be entitled to be paid any sum by which the proceeds of those duties levied by them in any year were less than that amount and that the sums so to be paid are to be charged on and paid out of the Consolidated Fund. The Revenue Act, 1911, 1 Geo. 5, c. 2, s. 17, provided that the sum to be paid in respect of the local taxation (custom and excise) duties into the local taxation account under the Finance Act, 1907, s. 17 (2), should in every year until Parliament should otherwise determine, instead of being a sum equal to the amount which would have been paid as the proceeds of those

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duties if the Act had not passed be a sum equal to the amount of the English share of the proceeds of those duties during the year ending March 31st, 1909. The Roads Act, 1920, 10 & 11 Geo. 5, c. 72, provides by s. 1 that the duties on mechanically propelled vehicles and the excise duties for carriages shall be levied by county councils in accordance with provisions to be made for the purpose by Order in Council (see the Road Vehicles (Registration and Licensing) Order, 7th February, 1921). Such duties are to be paid into the Exchequer in accordance with the directions contained in this Order. The Act further provides by s. 2 that there shall be charged on and issued out of the Consolidated Fund a sum equal to the proceeds of the duties and all other sums paid into the Exchequer under the Act, and that out of the sum so to be issued out of the Consolidated Fund, there shall be paid in every year to the local taxation account the sum of £536,954 8*s.*, and that sum is to be applied in paying to county councils sums equal to the amounts certified by the Minister of Health to have been collected by those councils during the year ending March 31st 1909, the balance being paid into the Road Fund. The Act further provides by s. 7 (7) that all sums received by a county council by way of fees for licences granted under the Motor Car Act, 1903, and all penalties recovered in respect of offences under the Motor Car Acts, 1896 and 1903 shall be paid into the Exchequer in such manner and in accordance with such directions as may be contained in any Order in Council made under the Act. See the Order already referred to.

(*c*) Under this and the subsequent provisions of this section it was held that the county council, in substitution for the Exchequer, were bound to pay out of the county fund local grants in respect of the period between September 24th, 1888 and April 1st, 1889, though they did not come into existence until the latter date (*Re West Riding C. C.* (1890), 54 J. P. 533).

(2) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund and charge to the Exchequer Contribution Account (*a*) the following sums, that is to say—

. . . . . .

(c) They shall pay (*aa*) to every local authority (*b*), for any area wholly or partly (*c*) in the county, by whom a medical officer of health or inspector of nuisances (*d*) is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health Act, 1875, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts (*e*), a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into her Majesty's Exchequer (*f*) and not to the said local authority; and

(*a*) This account is a separate account, which consists of the sums from time to time received by a county council under the statutory provisions referred to in note (*b*) under sub-s. (1), *supra*.

(*aa*) As to the time for payment, *cf. Calne Union* v. *Wilts C. C.*, [1911] 1 K. B. 717; 75 J. P. 42.

(*b*) *I.e.*, every urban and rural district council. See s. 100, *post*, p. 783.

(*c*) As to areas in two counties, see sub-s. (5), *post*, p. 757.

Payments in respect

(*d*) The P. H. A., 1875, s. 189, *ante*, p. 447, provides that every urban authority shall from time to time appoint fit and proper persons to be medical officer of hea

nd inspector of nuisances. The same section also provides that, subject in the case f any officers any portion of whose salary is paid out of moneys voted by Parliament o the powers of the L. G. B. under the Act (s. 191), the urban authority may pay to uch officers such reasonable salaries, wages, or allowances as they may think proper, nd subject as aforesaid, every such officer shall be removable by the urban authority t their pleasure. Section 190 provides that every rural authority shall from time o time appoint fit and proper persons to be medical officer or officers of health nd inspector or inspectors of nuisances. By s. 191, a person shall not be appointed nedical officer of health unless he is a legally qualified medical practitioner. (This provision, however, is now considerably modified by s. 18, *ante*, p. 752, which requires n most cases a more extended qualification.) Section 191 further provides that the L. G. B. shall have the same powers as it has in the case of a district medical officer f a union with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority any portion f whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under the Act. See further as to the appointment and tenure of office of medical officers of health, sanitary inspectors, and inspectors of nuisances, the Public Health (Officers) Act, 1921, 11 & 12 Geo. 5, c. 23, *post*. Section 6 of that Act provides that s. 24 of the L. G. A., 1888, shall have effect as if the reference in sub-s. (2) thereof included a reference to that Act. Orders have been made by the Board prescribing the qualification, appointment, duties, etc., of medical officers of health and inspectors of nuisances. They will be found in App. II., *post*, Vol. II.

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of medical officers and inspectors of nuisances.

(*e*) The medical officer must send to the county council a copy of every periodical report of which he is required to send a copy to the Ministry of Health, and if he fails to do so the council may withhold their contribution under the above section (s. 19, *ante*, p. 753).

(*f*) Section 27 (1) provides that where a county council are required to pay any sum into the Exchequer, such sum is to be deducted from the amount payable under the provisions of the Act out of the local taxation account to such council, and is to be paid into the Exchequer.

. . . . . .

(3) A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section.

The effect of these sections has already been stated. The meaning of this provision is that in the case of all medical officers of health and inspectors of nuisances, half of whose salaries are paid by the county council under sub-s. (2) (c), the Ministry of Health will have power by order to prescribe the qualification (subject to the provisions of s. 18 of this Act), appointment, duties, salary, and tenure of office of such officers.

. . . . . .

(5) Where a sum is payable under this section to the guardians, authority, or officer of a union or other area, and such union or area is situate in more administrative counties than one (*a*), a proportionate part only of the sum otherwise payable shall be paid by the council of each of such counties to the guardians, authority, or officer, and the Local Government Board shall certify the proportionate part due from the council of each such county.

(*a*) An urban district cannot now be situate in more than one county, by reason of s. 50 (1) (b), *post*, p. 767. As the result of the L. G. A., 1894, ss. 24 (5), 36, there are now only a few rural districts not wholly comprised in one administrative county.

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(6) The guardians, authority, or officer to whom a sum is payable under this section on the certificate of the Local Government Board shall submit to the Board their claim to the payment in such manner and produce such evidence and comply with such rules as the Board from time to time require or make, and the Board shall fix the amount due on the like principles, and may impose the like conditions for the payment thereof as before the passing of this Act.

(7) The Local Government Board may, if they think fit, vary a certificate granted for the purposes of this section, but, unless so varied it shall be conclusive.

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Grant by county council towards costs of officers of union.

26.—(1) *After the thirty-first day of March next after the passing of this Act*, every county council (*a*), other than the London County Council, shall grant to the guardians of every poor law union wholly or partly in their county, an annual sum for the costs of the officers of the union (*b*) and of district schools to which the union contributes; and until Parliament otherwise determine, the said annual sum shall be such sum as the Local Government Board certify to have been expended by the guardians of each poor law union during the financial year ending the twenty-fifth day of March next before the passing of this Act, on the salaries, remuneration, and superannuation allowances of the said officers (other than teachers in poor law schools), and on drugs and medical appliances.

Italicised words repealed by the S. L. R. A., 1908.

(*a*) This includes the council of a county borough (see s. 34 (1)).

(*b*) In a Circular Letter of January 10th, 1889, issued by the L. G. B. to boards of guardians, the following opinion as to the meaning of this expression was given:

"The Act contains no definition of the expression 'officers of the union'; but the words clearly do not include parochial officers or officers appointed for areas such as rural sanitary districts in which the jurisdiction of the guardians is not in all cases co-extensive with the union. In the opinion of the Board, the following officers cannot be regarded as officers of the union for the purposes of the grant and care should be taken to exclude any expenditure of the guardians in respect of them:

Collectors of poor rates.
Assistant overseers.
Officers of rural sanitary authorities.
Officers of school attendance committees
Superintendent registrars, and
Registrars of births, deaths, and marriages.

"On reference to s. 100 of the Act, it will be seen that the expression 'office' is to be construed according to the definition of 'office,' which is to include a 'place, situation, or employment.' (And see note (*d*) to that definition, *post*, p. 78

"In some instances officers, in respect of whose services in certain capacities a claim can properly be made against the grant, will have acted also in other capacities and their salaries, remuneration, or superannuation allowances in the latter capacity will properly be chargeable on the grant. In these cases care should be taken to include only so much of the expenditure of the guardians as has been incurred on account of the services of these officers in the latter capacities.

"The Board consider that the cost of the rations of officers may be included. The expenditure of the guardians for this purpose should be taken from the 'Rations Account' in the Union Ledger, with the necessary deduction in respect of teachers and assistant teachers."

(2) Where a poor law union is situate in more counties than one, the payment under this section to the guardians of the union shall be borne by the counties in which each portion of such union is situate, in proportion to the rateable value of that portion, ascertained on such day as the Local Government Board may fix. Section 26.

The day fixed is April 1st, see Order of Dec. 8th, 1911.

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General Provisions as to Transfer.

28.—(1) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified, but, save as aforesaid, shall have and be subject to all the powers, duties, and liabilities, which the quarter sessions, or any committee thereof, or any justice or justices had or were subject to in respect of the business so transferred. General provisions as to powers transferred to county council.

(2) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act (*a*), either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned (*b*); the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays (*c*), and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals.

(*a*) The powers and duties transferred by this Act to county councils are those which constituted the administrative business of quarter sessions enumerated in s. 3, and those of justices out of session mentioned in s. 7, *i.e.*, the licensing of theatres, and the execution of the Explosives Act, 1875.

(*b*) A district council is defined by s. 100, *post*, p. 785. It means an urban or rural district council. The effect of this provision is practically to enable a county council to delegate any of its powers, except the making of rates, to a district council.

(*c*) Similarly they may delegate to justices their licensing powers under the Cinematograph Act, 1909. Petty sessions when exercising such delegated licensing powers cannot state a special case (*Huish* v. *Liverpool J J.*, [1914] 1 K. B. 109; 78 J. P. 45).

(3) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Summary proceeding for determination of questions as to transfer of powers.

Section 29. Court *of Justice* in such summary manner as subject to any rules of court may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

This is a useful provision, and has been put in operation in a number of cases where questions have arisen as to the respective liabilities of sanitary authorities and county councils. The practice formerly was to prepare a special case signed by the chairmen of the disputing bodies, and then to apply for leave to set down the case in the Crown Paper: see *Ex parte Staffordshire Quarter Sessions*, W. N. (1889), p. 183. Now, however, by a rule of the High Court dated August 10th, 1892, the procedure is to be by special case to be agreed on by the parties, or in default of such agreement to be settled by an arbitrator agreed upon by the parties or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers. The special case when settled is to be filed at the Crown Office Department at the central office of the Supreme Court, by the chairman of quarter sessions, the county council, or the local authority concerned, within eight days from the settlement thereof, and is to be put into the Crown Paper for argument as if it were a case stated by justices under 20 & 21 Vict. c. 43. Without attempting to give an exhaustive list of the reported cases decided under this section, the following may be mentioned: *Ex parte Somerset C. C.* (1889), 58 L. J. Q. B. 513; 54 J. P. 182; *Ex parte Staffordshire Quarter Sessions* (1889), 54 J. P. 72; 6 T. L. R. 45; *Re West Riding C. C.* (1890), 54 J. P. 533; 6 T. L. R. 265; *Warminster L. B.* v. *Wilts C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375; *Re Cardigan C. C.* (1890), 54 J. P. 468; *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566; *Ex parte Kent C. C. and Dover*, [1891] 1 Q. B. 389; 55 J. P. 248; *Ex parte Leicestershire C. C.*, [1891] 1 Q. B. 53; 55 J. P. 87; *Re Salop C. C.* (1891), 56 J. P. 213; 65 L. T. 416; *Ex parte Kent C. C.*, [1891] 1 Q. B. 725; *Montgomeryshire C. C.* v. *Pryce-Jones* (1892), 57 J. P. 308; *Marlborough Town Council* v. *Wilts C. C.* (1894), 58 J. P. 213; *Cornwall C. C.* v. *Truro Town Council* (1894), 63 L. J. M. C. 60; 58 J. P. 299; *In re Bedford Urban Sanitary Authority*, [1894] 2 Q. B. 786; 58 J. P. 786; *Norfolk C. C.* v. *Bittering Highway Surveyor* (1894), 58 J. P. 497; *Notts C. C.* v. *M. S. & L. Rail. Co.* (1894), 71 L. T. 430; *Herefordshire C. C.* v. *Leominster Town Council*, [1895] 1 Q. B. 43; 59 J. P. 38; *Thetford Corporation* v. *Norfolk C. C.*, [1898] 2 Q. B. 468; 62 J. P. 724; *London Standing Joint Committee* v. *London C. C.* (1911), 75 J. P. 455; 104 L. T. 923. The court will not under the above section answer abstract questions on the construction of the Act (*Re Cardigan C. C., supra*).

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PART II.

APPLICATION OF ACT TO BOROUGHS, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES.

Application of Act to Boroughs.

Certain large boroughs named in the Schedule to be county boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself shall, *from and after the appointed day*, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or

gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said Schedule to be deemed for the purposes of this Act to be situate. Section 31.

Italicised words repealed by the S. L. R. A., 1908.

The provisions of this Part of this Act as to its application to county boroughs and other boroughs are, for the most part, beyond the scope of the present Work. Accordingly, only those sections or parts of sections have been included here which affect the council of a borough regarded as an urban sanitary authority. In addition to the boroughs named in the Third Schedule, several new county boroughs have been created under s. 54 (1) (d) *post*, p. 769. See notes thereto.

The council of a county borough have all or nearly all the powers of a county council, but this only affects their position as an urban authority to the extent hereinafter noticed.

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34.—(2) *On the appointed day* there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and approaches thereto, or parts thereof, situate within the borough as were previously repairable by the county or any hundred therein, and the costs of the council in repairing such bridges and approaches, or parts thereof, and in repairing any roads in the borough which by virtue of this Act or any Act applied by this Act are main roads, shall be payable out of the borough fund. Application of Act with modifications to county boroughs.

It is not clear whether the council of a county borough, who have the powers of a county council for most purposes, possess the power of declaring roads to be main roads under the Highway Act of 1878. It is the general opinion that they do not, and the editors have not, in practice, come across any road which has been "mained" in purported exercise of such a power. If the power exists, any roads so declared to be main roads, and roads which prior to the passing of this Act were already main roads, whether under s. 13 or s. 15 of the Highway Act, 1878, must be repaired at the expense of the borough fund, though the other highways in the borough may be repairable out of the general district rate under the P. H. A., 1875, s. 210, *ante*, p. 473, by the council in their capacity of urban authority.

It should be observed that some bridges in the borough may already have been repairable by the council under s. 119 of the Municipal Corporations Act, 1882: see *R.* v. *Dorset* (*Inhabitants of*) (1881), 45 L. T. 308; *R.* v. *Southampton* (1886), 17 Q. B. D. 424; 50 J. P. 773; *R.* v. *Southampton* (No. 2) (1887), 19 Q. B. D. 590.

. . . . . .

(7) The powers and duties of the county authority under the Allotments Act, 1887, shall, as respects the borough, continue to be exercised and performed by the Local Government Board.

The Allotments Act, 1887, s. 16, provided that for the purposes of that Act the "county authority" should be any representative body elected by the inhabitants of the county which might be established under any future Act, and that until such representative body should be established, the powers and duties of the county authority should be exercised and performed by the L. G. B. County councils, therefore, became the county authorities under the Act, but this did not apply to county boroughs. By s. 20 (1) of the Small Holdings and Allotments Act, 1907, the powers of the L. G. B. under the Allotments Acts, except such of those powers as related to the finance of local authorities, were transferred to the Board of Agriculture and Fisheries, now the Ministry of Agriculture and Fisheries (see 9 & 10 Geo.

Note to Section 34.

5, c. 91). These Acts were repealed by the Small Holdings and Allotments Act, 1908, which consolidated and amended the earlier Acts on the subject of allotments. See the Act in App. I., *post*, Vol. II. And see also the Land Settlement (Facilities) Act, 1919, also set out in the Appendix.

Application of Act to larger quarter sessions boroughs not county boroughs.

35. In the case of a quarter sessions borough, not being one of the boroughs named in the Third Schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, *on and after the appointed day*, apply:

(1) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions hereinafter mentioned, be liable to be assessed to county contributions in like manner as the rest of the county.

In many cases, where the local authorities for the execution of Acts were in counties the quarter sessions, in boroughs the local authorities under the same Acts were the borough councils. In these cases, while the administrative powers of the quarter sessions are transferred to the county councils by this Act, the councils of the larger boroughs to which this section relates, under the provisions in the text, retain their powers as local authorities.

. . . . . .

(3) Notwithstanding the last enactment (*a*) the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting main roads (*b*), form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any main road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to main roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions.

(*a*) This has reference to sub-s. (2), which provides that the borough shall not be liable to be assessed to county contributions for purposes to which it was not liable to be so assessed at the time of the passing of the Act. The exemption extends to the costs of new county bridges taken over by a county council under s. 6 (*Bury St. Edmunds (Mayor, etc. of)* v. *West Suffolk C. C.*, [1898] 2 Q. B. 346; 62 J. P. 486).

(*b*) These provisions are set out in App. I., *post*, Vol. II. Formerly a quarter sessions borough was not a highway area, not being included in the definition of an "urban authority" in the Highway Act, 1878. Consequently, the provisions of that Act as to main roads did not apply to a quarter sessions borough. This is no longer the case. Main roads in such a borough vest in and are under the control of the county council under s. 11 (1), (6), unless the borough council have claimed the right to retain them under sub-s. (2) of that section. And the other provisions of that section apply as well within such a borough as in any other highway area.

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(4) Provided that—

(a) The borough shall be deemed to be an urban sanitary district, within the meaning of the Highways and Locomotives (Amendment) Act, 1878 (*a*); and the council of the borough shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making byelaws respecting locomotives, and authorising locomotives to be used on any road within the borough (*b*); save that if any difference is made by such byelaws or authority between any main road maintained by the county council and the other roads in the borough, such authority and byelaws shall require the approval of the county council; and

(*a*) See the notes to the preceding sub-section.

(*b*) The Highways and Locomotives (Amendment) Act, 1878, s. 28, *post*, Vol. II., provides that the council of every borough having a separate court of quarter sessions may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used in any highway within the borough, or part of any such highway under such conditions (if any) as to them may appear desirable. By s. 31, it was formerly provided that a council of a quarter sessions borough might make byelaws as to the hours during which locomotives are not to pass over the turnpike roads or highways within the borough, the hours being in all cases consecutive hours, and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge when they are satisfied that such use would be attended with danger to the public. Section 35 required these byelaws to be confirmed by the Local Government Board. But s. 31 is now repealed by s. 18 of the Locomotives Act, 1898, *post*, Vol. II., subject, however, to certain savings for existing byelaws. And by ss. 5, 6, 9, and 17 of that Act, other provision is made for the regulating of locomotives on highways, for the restriction of locomotive traffic by byelaws, and for licensing locomotives.

Light locomotives were exempted from the provisions of the Act of 1878 by the Light Locomotives Act, 1896, and other provisions made by that Act for regulating the use of them on highways. See now also the Motor Car Acts, 1896 and 1903, and the Roads Act, 1920.

(b) The council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any main roads in the borough; and

This provision had reference to the claim which an urban authority might make under s. 11 (2), *ante*, p. 740. Its operation is now spent.

(c) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to

Section 35.

make the said declaration, which shall have the same effect as if made by the county council.

Immediately after this Act came into operation all roads which had been disturnpiked since December 31st, 1870, became main roads. No declaration was necessary in the case of such roads. By the text the council of the borough had until August 13th, 1890, power to apply to the county council to declare certain other roads to be main roads, *i.e.*, such roads as might be declared main roads under the Highway Act, 1878, s. 15, in App. I., *post*, Vol. II.

* * * * * *

Application of Act to smaller quarter sessions boroughs with population under 10,000.

38. Where a borough having a separate court of quarter sessions contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall *after the appointed day* apply :

. . . . . .

(2) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(a) As regards coroners ; and

(b) As regards the appointment of analysts under the Acts relating to the sale of foods and drugs (*a*) ; and

(c) Under the Acts relating to—

(i) Reformatory and industrial schools ; and

(ii) Fish conservancy ; and

(iii) Explosives ; and

(d) Under the Highways and Locomotives (Amendment) Act, 1878 (*b*) :

Provided that the transfer by this section—

(a) Shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts (*c*) ; and

(b) Shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882 :

(*a*) By the Sale of Food and Drugs Act, 1875, s. 10, *post*, Vol. II., analysts were to be appointed by the town council of every borough having a separate court of quarter sessions. Such appointments are still made by the town councils of the larger quarter sessions boroughs, but they are no longer made by the town councils of the boroughs to which this section applies. As to enforcing appointments, see the Sale of Food and Drugs Act, 1899, s. 3, in App. I., *post*, Vol. II.

(*b*) These powers include those of authorising or licensing locomotives under ss. 28 and 31 of the Act of 1878 : see *post*, Vol. II.

(*c*) The provisions of this Act as to existing officers and the continuance of existing contracts are contained in ss. 118—120, 122, 125. The only officers affected by them whom it is here necessary to refer to are analysts of the boroughs, who by s. 119 became officers of the county council and continued to hold office by the same tenure, on the same terms and conditions and with the like remuneration as formerly. If their office is abolished they are entitled to compensation under s. 120 ; so also, if their fees or salary are diminished.

(3) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 :

(4) The council of the borough may within two years after the passing of this Act, apply to the county council to declare

such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be, main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council:

The foregoing sub-sections correspond to s. 35 (3) and (4). See those sub-sections and notes thereto.

(5) The area of the borough shall for the purposes of the above-mentioned Acts and all other administrative purposes of the county council be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions:

This provision does not in any way affect the powers and duties of the borough council in their capacity of urban sanitary authority.

. . . . . .

(7) It shall be lawful for her Majesty the Queen, on petition from the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make such provision as to her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all enactments and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply, as if such court of quarter sessions or commission of the peace, as the case may be, did not exist:

In the event of the revocation of a grant of quarter sessions, any appeal which would otherwise lie to the borough sessions, *e.g.*, under the P. H. A., 1875, s. 269, *ante*, p. 599, would thereafter lie to the quarter sessions of the county. Another result would be that the county justices would acquire concurrent jurisdiction with the borough justices in the borough in those cases in which such jurisdiction had hitherto been excluded. See the Municipal Corporations Act, 1882, s. 154.

Concurrent jurisdiction of county and borough justices.

It is generally considered that county justices have concurrent jurisdiction out of quarter sessions with the borough justices—(a) in all boroughs having separate commissions of the peace but not separate courts of quarter sessions [except the boroughs of Coventry, Ramsgate, and Stratford-upon-Avon, where their jurisdiction is excluded by special statutes]; and (b) in all quarter sessions boroughs from which their jurisdiction is not excluded by the provisions of ancient charters. See a Paper issued from the Home Office in 1904, entitled "Courts of Summary Jurisdiction

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in England and Wales"; but see as to grants of quarter sessions since 1835, *R.* v. *Warwickshire JJ.*, [1902] 2 K. B. 101. If the commission of the peace is revoked, the county justices alone will have jurisdiction within the borough. In neither case, however, will the council as urban authority be affected.

(8) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if her Majesty revokes the grant of a court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections:

(9) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

Application of Act to all boroughs with population under 10,000.

39.—(1) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(a) To the police force of the borough, or

(b) To the appointment of analysts under the Acts relating to the sale of foods and drugs (*a*), or

(c) To the execution of the *Contagious Diseases* (*Animals*) *Acts*, 1878 *to* 1886 (*b*), or the Destructive Insects Act, 1877 (*c*), or

(d) To gas meters, or

(e) To weights and measures, if the council exercise any jurisdiction in relation thereto,

shall cease, and, subject to the provisions of this Act as to the members of the police force holding office on the said day, the area of the borough shall for all purposes of the Acts relating to the county police force, or other matters above in this section mentioned, form part of the county in like manner as if it were not a borough:

(*a*) As stated in the notes to the preceding section analysts were appointed by the town councils of boroughs having a separate court of quarter sessions. They were also appointed by the town council of every borough which had under any general or local Act of Parliament or otherwise a separate police establishment (38 & 39 Vict. c. 63, s. 10, in App. I., *post*, Vol. II.). No such appointments will in future be made by the councils of any such boroughs if they are within the provision in the text.

(*b*) Italicised words repealed by the S. L. R. A., 1908, because these Acts were repealed and consolidated by the Diseases of Animals Act, 1894; the Diseases of Animals Act, 1894, has itself been in turn amended by the Diseases of Animals Acts, 1896, 1903, 1909, 1910, and the Poultry Act, 1911.

(*c*) This Act has been extended to all pests destructive to crops, trees or bushes: see the Destructive Insects and Pests Act, 1907.

(2) Provided that nothing in this section shall transfer to the county council any powers, duties, or liabilities under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886.

This proviso had reference to 49 & 50 Vict. c. 32, s. 9, which transferred to urban and rural sanitary authorities the powers of local authorities under 41 & 42 Vict. c. 74, s. 34, with reference to dairies, cowsheds, and milkshops. These sections have themselves been repealed by the Milk and Dairies Act, 1914, 4 & 5 Geo. 5, c. 49, and the Milk and Dairies Act, 1915, 5 & 6 Geo. 5, c. 66 (see note on p. 734, *ante*). **Note to Section 39.**

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PART III.

Boundaries.

50.—(1) The first council elected under this Act for any administrative county (*a*) shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county : Provided always that— Boundary of county for first election.

. . . . . .

(b) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of one thousand eight hundred and eighty-one (*b*).

(*a*) An administrative county is simply an area for which a county council are elected, but the term does not include a county borough.

(*b*) The importance of this provision is not at first sight obvious; but when read with the next sub-section and s. 59 (1), *post*, p. 773, its effect is to transfer for all purposes to one county, an urban district which previously was situate in two counties : see *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566.

. . . . . .

(2) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of this Act the county of such county council.

See the note to the preceding sub-section.

(3) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form, for the purposes of this section, part of the county in which such place is situate.

* * * * * *

Section 52.

Provisional Order as respects boroughs and urban sanitary districts in same area.

52.—(1) The Local Government Board shall make Provisional Orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such Order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the Order shall provide for the council of the borough becoming the district council, and the Order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county; and if the population exceeds fifty thousand, the Order may constitute the borough into a county borough, and make such provisions as may be necessary for carrying this Act into effect as respects such county borough; and the provisions of this Act respecting county boroughs shall, subject to the provisions of the Order, apply.

The foregoing provision applied only to fourteen exceptional cases: Banbury, Blandford Forum, Calne, Cambridge, Chippenham, Faversham, Folkestone, Launceston, Lyme Regis, Lymington, Morpeth, Oxford, St. Ives (Hunts.), and Wenlock. Provisional Orders have been issued dealing with all these districts.

Acts confirming Provisional Orders under this section have been passed as follows:—Banbury, 52 & 53 Vict. c. cxvi.; Blandford Forum, 52 & 53 Vict. c. cxii.; Calne, 52 & 53 Vict. c. xlvi.; Cambridge, 52 & 53 Vict. c. cxvi. See also 57 & 58 Vict. c. lx.; Chippenham, 52 & 53 Vict. c. xlvi.; Faversham, 52 & 53 Vict. c. clxxii.; Launceston, 52 & 53 Vict. c. clxxii.; Lyme Regis, 52 & 53 Vict. c. cxii.; Lymington, 52 & 53 Vict. c. cxii.; Morpeth, 52 & 53 Vict. c. cxii.; Oxford, 52 & 53 Vict. c. xv.; also creating it a county borough under s. 54 (d), *post*, p. 769. And see 53 & 54 Vict. c. ccxxiii., and 59 & 60 Vict. c. cv.; St. Ives (Hunts), 52 & 53 Vict. c. clxxii.; Wenlock, 52 & 53 Vict. c. xxii.

The municipal borough of Folkestone is still partly within the urban district of Sandgate. The corporation are the sanitary authority for the other parts of the borough, being "the authority for executing the Folkestone Improvement Act, 1855." See also 56 & 57 Vict. c. lxxx.

(2) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the Order may provide for the appointment by such university or colleges of members on the district council.

See Borough of Cambridge Order, 1889, Arts. V. and VI., and City of Oxford Order, 1889, Arts. VIII., XI., and XII.

(3) A Provisional Order under this section shall not be of any effect until it is confirmed by Parliament.

* * * * * *

Future alterations of boundaries.

54.—(1) Whenever it is represented by the council of any county or borough to the Local Government Board—

(a) that the alteration of the boundary of any county or borough (*a*) is desirable; or

(b) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or

(c) that the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable ; or Section 54.

(d) that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough (*b*) ; or

(e) that the alteration of the boundary of any electoral division (*c*) of a county, or of the number of county councillors and electoral divisions in a county, is desirable ; or

(f) that the alteration of any area of local government (*d*) partly situate in their county or borough is desirable,

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry (*e*), and may make an Order (*f*) for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such Order, and if they make the Order may by such Order divide or alter any electoral division.

(*a*) The Ministry of Health issue printed instructions annually as to representations in favour of the alteration of borough boundaries under this section. They must be carefully studied in connection with any proposal of this character, as the particulars required by the department are very numerous and involve much time in preparation. The representation must be made not later than the prescribed date, if it is hoped to obtain confirmation of the Provisional Order during the ensuing session. For a copy of the latest instructions, see App. II., *post*, Vol. II. See the Local Government (Adjustments) Act, 1913, *post*, p. 1082, and s. 62, p. 775, *post*, as to financial adjustments upon alteration of areas.

The M. corporation agreed to extend the city boundary so as to include the urban district of L. on certain definite terms. They duly promoted a Bill which contained, besides many other matters, a provision for the inclusion of the urban district upon the agreed terms. When the Bill was before the House of Lords, the committee inserted a provision for the payment of compensation by the corporation to the county council for loss of rateable value caused by the extension of the city. The provision did not affect the terms of the agreement as between the corporation and the district council. The corporation, however, decided to drop the clauses dealing with extension of boundaries, and the district council thereupon moved for an injunction to prevent them doing so. It was held, that, as one of the Houses of Parliament was insisting on terms which materially affected a matter which must have been in the contemplation of the parties, either party had a right to retire (*Levenshulme U. D. C.* v. *Manchester Corporation* (1908), 72 J. P. 470).

A bill was promoted in Parliament for the enlargement of a Royal borough by the inclusion of certain adjoining police boroughs. An item in the expenses charged to the common good was referred to as fees for professional expenses. It was alleged that the item included payments in respect of the election expenses of annexationist candidates for membership in the municipal councils of the borough sought to be annexed. It was held that such payments were against public policy as tending to interfere in the interests of the annexing borough with the municipal elections in the adjoining boroughs (*Kemp* v. *Glasgow Corporation*, [1920] A. C. 836 ; 84 J. P. 225).

(*b*) This presumably refers to a population as ascertained by some recent census. A seasonal population of over 50,000, such as that of a summer resort, would not satisfy the requirement. Population, however, is not fair as a test, for the effect on county government and other matters have to be considered by the department.

(*c*) The power to alter electoral divisions has been transferred to the Home Office by order in council dated May 27th, 1921. Section 2 of the Representation of the People Act, 1922 (12 & 13 Geo. 5, c. 12), *post*, p. 1122, amends this sub-section by empowering the Secretary of State to make an order without holding an inquiry unless petitions have been presented against the representation by any local authority in or for the county or any number of local government electors registered for any electoral division in the county not being less than one hundred or than one-sixth of the electors, whichever number is the smaller.

(*d*) An area of local government would include an urban or rural sanitary district. An urban district cannot now be situated in two counties (see ss. 50, 59), and as to

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rural districts, see the L. G. A., 1894, s. 36. As to the power still possessed, but not acted upon, by the L. G. B. (now M. of H.) to alter sanitary areas by Provisional Order under the P. H. A., 1875, s. 270, see *ante*, p. 608.

(*e*) Local inquiries are held as under the P. H. A., 1875 (s. 87, *post*, p. 782).

(*f*) This Order will be provisional in the cases mentioned in sub-s. (3); in other cases it will take effect upon the date fixed thereby without confirmation by Parliament. The Order will be conclusive: see s. 87, *post*, p. 782.

By Provisional Orders under this section or by local Acts, the Isle of Wight has been separated from Hampshire (52 & 53 Vict. c. clxxvii.) and the following new county boroughs have been created, viz., Oxford (52 & 53 Vict. c. xv); Grimsby (53 & 54 Vict. c. cciv); Newport (Mon.) (54 & 55 Vict. c. ccx); Bournemouth (62 & 63 Vict. c. cxlix); Burton-on-Trent (63 & 64 Vict. c. clxxviii); Warrington (63 & 64 Vict. c. clxxviii); Rotherham (2 Edw. 7, c. ccx); West Hartlepool (2 Edw. 7, c. ccx); Blackpool (4 Edw. 7, c. clxii); Tynemouth (4 Edw. 7, c. clxii); Southport (5 Edw. 7, c. cvii); Smethwick (6 Edw. 7, c. cv); Merthyr Tydfil (7 Edw. 7, c. clviii); Stoke-upon-Trent (comprising the former county borough of Hanley and other areas) (8 Edw. 7, c. clxiv); Barnsley (2 & 3 Geo. 5, c. cxxxviii); Carlisle (3 & 4 Geo. 5, c. cxxxiv); Dewsbury (2 & 3 Geo. 5, c. cxxxix); Eastbourne (10 Edw. 7 & 1 Geo. 5, c. cxxiii); Wallasey (2 & 3 Geo. 5, c. cxxxvii); Southend-on-Sea (3 & 4 Geo. 5, c. cv); East Ham (4 & 5 Geo. 5, c. iii).

(2) Provided that in default of such representation by the council of any county or borough *before the first day of November, one thousand eight hundred and eighty-nine*, the Local Government Board may cause such local inquiry to be made, and thereupon may make such Order as they may deem expedient.

(3) Provided that if the Order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

As to the making of Provisional Orders, see s. 87, *post*, p. 782.

(4) Where such Order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case, make the proportionate alteration in the number of aldermen.

* * * * * *

Future alterations of county districts and parishes and wards, and future establishment of urban districts.

57.—(1) Whenever a county council is satisfied that a primâ facie case is made out as respects any county district (*a*) not a borough, or as respects any parish, for a proposal for all or any of the following things that is to say—

(a) The alteration or definition of the boundary thereof;

(b) The division thereof or the union thereof (*b*) with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish (*c*);

(c) The conversion of any such district or part thereof, if it is a rural district, into an urban district (*d*), and if it is an urban district into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts;

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(d) The division of an urban district into wards (*e*); and

(e) The alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,

the county council may cause such inquiry (*f*) to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department (*g*), or other Government Department as may be prescribed (*h*), and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an Order (*i*) for the same accordingly.

Under the P. H. A., 1875, s. 270, the L. G. B. (now M. of H.) have power to form, dissolve, and alter urban districts, but that power is not now exercised in view of these later provisions: see p. 608, *ante*.

Forms for use under s. 57, *supra*, will be found in the Encyclopædia of Forms and Precedents, Vol. VIII., at pp. 147 *et seq.*

(*a*) The term "county district" means an urban or a rural sanitary district (s. 100, *post*, p. 785). As to areas in two counties, see the L. G. A., 1894, s. 36 (11), *post*, p. 950. See *Kemp* v. *Glasgow Corporation*, *ante*, p. 769.

(*b*) The union here referred to is a permanent union for all purposes, not one for special purposes such as may be made under the P. H. A., 1875, s. 279.

(*c*) Although this section gives no express power to a county council or to the M. of H., to alter the area of the poor law unions, yet an Order made under the section by a county council, and confirmed by the Board, adding a part of the parish situated in one union to another parish situated to another union, has the automatic effect of transferring such added area from the one union to the other, even though the areas of the union and rural district will not in such a case be coterminous (*Bootle Union* v. *Whitehaven Union*, [1903] 2 Ch. 142; 67 J. P. 325).

(*d*) The provisions of the L. G. A., 1894, s. 54, with reference to Orders made under the above section, must be carefully noted. The Ministry of Health do not favour the constitution of urban district councils for places which do not contain a considerable population and are not essentially urban in character. See the remarks in their annual report of 1904—1905 in regard to two Orders made by county councils for the conversion into urban districts of parishes having a population of 1,604 and 3,161 respectively. "Our experience of urban districts of a somewhat similar character makes us doubtful of the expediency of placing such small places under urban district councils. The sub-division of administrative districts often leads to increased expenditure, and in the case of areas having a small population and low assessable value, this increase of expenditure is not generally accompanied by a corresponding increase of administrative efficiency."

(*e*) Orders as to wards and members must now be sent to the Home Office under an Order of the M. of H., dated the 26th September, 1921 (S. R. and O., 1921, No. 1511).

(*f*) As to the expenses of such an inquiry see the L. G. A., 1894, s. 72 (4), *post*, p. 984.

(*g*) Now the Board of Education (see the Board of Education Act, 1899).

(*h*) "Prescribed" means prescribed by the L. G. B. (now M. of H.) (s. 87 (4), *post*, p. 783). See the Orders of the L. G. B., dated September 14th, 1889, November 29th, 1902, and June 28th 1910, set out in App. II., *post*, Vol. II. See also the L. G. A., 1894, s. 36 (7), *post*, p. 949, as to notices to the parish council or parish meeting of a parish which will be affected by the Order, and as to their right to appear at the inquiry and petition against the Order.

(*i*) As to this Order, see *infra*. It is important that the Order made should correspond with the proposal mentioned in the notice. For example, it is not competent to a county council after the issuing of a notice and the holding of an inquiry as to a proposal to convert part of a parish into an urban district, to make an Order forming the whole parish into an urban district. When some latitude is desired as to the character of the Order to be made, the notice may be framed so as to leave some discretion to the county council. The effect of an Order creating a new district is the same as if the district had been created under the P. H. A., 1875 (*R.* v. *Barnes*

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(*Overseers of*) (1896), 13 T. L. R. 25). As to the effect of the extension of an urban district in relation to the supply of water in the added area, see *Huddersfield Corporation* v. *Ravensthorpe U. D. C.*, [1897] 2 Ch. 121; 61 J. P. 596, referred to at p. 125, *ante*, and see also *Brighton Intercepting and Outfall Sewers Board* v. *Hove Corporation* (1904), 68 J. P. 565; 20 T. L. R. 760. See also as to the effect of an extension in relation to local Acts in force in the original area, *Hill* v. *Crediton U. D. C.* (1899), 80 L. T. 861.

(2) Notice of the provisions of the Order shall be given, and copies thereof shall be supplied in the prescribed manner (*a*), and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards (*b*), shall come into operation upon being finally approved by the county council (*c*).

(*a*) *I.e.*, the manner described by the L. G. B. (s. 87 (4), *post*, p. 783.

(*b*) These cases are those mentioned in sub-s. (1), clauses (d) and (e), *ante*, p. 771.

(*c*) It is not required that the Order of the county council shall be confirmed or approved by the L. G. B. or any other authority. The final approval by the county council is usually given by a further Order, but a resolution is sufficient.

(3) In any other case (*a*) the Order shall be submitted to the Local Government Board; and if within three months (*b*) after such notice of the provisions of the Order as the Local Government Board determine to be the first notice, the council of any district affected by the Order (*c*), or any number of county electors (*d*) registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the Order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the Order, the Local Government Board shall cause to be made a local inquiry (*e*), and determine whether the Order is to be confirmed or not (*f*).

(*a*) *I.e.*, in the cases mentioned in clauses (a), (b), and (c) of sub-s. (1), *ante*, p. 770.

(*b*) This period is now reduced to six weeks (L. G. A., 1894, s. 41, *post*, p. 951).

(*c*) This will signify, in the case of an Order affecting any urban or rural district, such district.

(*d*) County electors are the persons who are registered to vote in the election of county councillors. The qualification of electors and the preparation of the lists of local government electors are now regulated by the Representation of the People Act, 1918, 8 Geo. 5, c. 64 *post*. Boards of Guardians affected by the Order may also petition against it under the L. G. A., 1894, s. 36 (10), *post*, p. 949.

(*e*) Local inquiries are regulated by s. 87, *post*, p. 782.

(*f*) The L. G. B. expressed an opinion that in confirming an Order they had no power to vary the area dealt with. But no doubt they might make modifications in matters of detail.

(4) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the Order.

When six months have elapsed after the confirmation of the Order, no objection can be taken to the validity of it: see the L. G. A., 1894, s. 42, *post*, p. 951, and *R.* v. *Middlesex JJ., Ex parte Walsall Union*, [1907] 2 K. B. 581; 71 J. P. 393. But it can be amended at any time under s. 59 (6), *post*, p. 775, by the same authority which made it.

The view taken by the L. G. B. and presumably by their successors, the Ministry of Health, is that they must confirm an Order under this sub-section even if they do not approve of it, as for example, when an Order is made for the constitution of an urban district with a very small population. **Note to Section 57.**

(5) The Local Government Board, on confirming an Order, may make such modifications therein as they consider necessary for carrying into effect the objects of the Order.

See note (*f*) to sub-section (3).

The L. G. B. state in their annual reports that the majority of Orders issued by county councils dealing with boundaries require modification in some respects. The modifications relate to such matters as the description of boundaries, the compensation of persons affected by the alterations, the arrangements for the election of new authorities, the continuance for a fixed period of existing byelaws, the operation of provisions in local Acts, and the status of residues or excluded portions of parishes for the purposes of the L. G. A., 1894, when parts of them have been included in urban districts. It is understood, however, that the Ministry of Health will assist a county council in framing Orders so as to reduce to a minimum the number of necessary modifications.

(6) An Order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

It may be inferred from this provision that the section was intended to supersede the provisions of other statutes in respect of matters to which it relates. See first note to section.

* * * * * *

59.—(1) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient. Supplemental provisions as to alteration of areas.

This will apply to Orders made under ss. 54 and 57, *ante*, pp. 768, 770; also to Orders concerning alteration of areas made under the L. G. A., 1894 (see s. 69 of that Act, *post*, p. 982). See also *R.* v. *Middlesex JJ.*, [1906] 2 K. B. 365; 70 J. P. 385; affirmed on appeal on the ground that six months had elapsed after the confirmation of the Order there in question (see *ante*, p. 772).

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes (*a*), whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other; Provided that—

(a) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(b) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the

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above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and

(c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rent-charge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(*a*) One result of this provision is to transfer an urban district previously situated in two counties to that county which contained the largest portion of the population according to the census of 1881. The case of *Re Staffordshire and Derbyshire County Council* (1890), 54 J. P. 566, may be mentioned as illustrating the effect of such a transfer.

The words "for all purposes" merely mean that a place shall form part of such county for the exercise therein of their respective offices by the officers named: see *Ex parte London C. C.*, [1892] 1 Q. B. 33; 56 J. P. 279.

. . . . . .

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(a) May provide for the abolition, restriction, or establishment, or extension, of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

(b) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and

(c) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and

(d) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

(e) May adjust any property, debts, and liabilities affected by the scheme or order.

The expression "local authority" in this sub-section includes a burial board (*R.* v. *Durham C. C.*, Local Government Chronicle, 1897, p. 70. See also *R.* v.

Keighley Overseers, *ibid.*, p. 47). As to provision for pending actions, see *Jackson* v. *Plympton St. Mary R. D. C.*, *post*, p. 777. As to the application of the provisions as to existing officers, see *West* v. *Wilts C. C.* (1893), 10 T. L. R. 19. **Note to Section 59.**

As to adjustment, the county council appear by their Order to have power to provide for everything to which the parties may agree under s. 62, *infra*. In so far as the Order does not so provide it seems that s. 62 will apply (*In re Sowerby U. D. C. and Mytholmroyd U. D. C.* (1896), 74 L. T. 313).

For a discussion as to the powers of the county council under this sub-section, see *R.* v. *Middlesex JJ.*, *ante*, p. 772.

(5) Where an alteration of boundaries of a county is made by this Act an Order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such Order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such Order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the Order is confirmed by Parliament.

Provisional Orders are regulated by s. 87, *post*, p. 782.

(6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order (*a*). Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament (*b*), either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act (*c*).

(*a*) This provision will apply to Orders made under ss. 54, 57, *ante*, pp. 768, 770. Such Orders may be amended by subsequent Orders as above described.

(*b*) An Order is provisional only if made under s. 54 (3) (*ante*, p. 770) and s. 59 (6).

(*c*) Such an amendment will be necessary in every case where an Order affects a district subject to a local Act. As to what is a local and personal Act within the meaning of this sub-section, see *R.* v. *London C. C.*, [1893] 2 Q. B. 455; 58 J. P. 21; *R.* v. *Watermen's and Lightermen's Co.*, [1897] 1 Q. B. 659.

Compare the provisions of s. 303 of the P. H. A., 1875, *ante*, p. 637.

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government. General provisions as to alteration of boundaries.

Urban and rural districts are areas of local government within the meaning of the above section. The object is to provide, as far as possible, that every area shall be a distinct area for all purposes, although, in the meantime, it may be subject to different governing bodies for different purposes.

Section 36 of the L. G. A., 1894, *post*, p. 947, contains more explicit directions as to avoiding the overlapping of areas of local government.

* * * * * *

62.—(1) Any councils and other authorities affected by this Act or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorised Adjustment of property and liabilities.

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by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Commissioners under this Act or the Local Government Board.

As to the power of the Ministry of Health to appoint an arbitrator in a case where an existing adjustment between a county and a county borough had become unequitable under s. 32 (6) of this Act, see *R.* v. *Minister of Health*, [1921] 1 K. B. 1; 85 J. P. 49.

A scheme or order may itself adjust any property debts and liabilities affected by it (s. 59 (4), *ante*, p. 774); but, if it does not do so, the text will apply: see note to sub-s. (2), *post*, p. 778.

See also the L. G. A., 1894, s. 68, as to adjustments required under that Act.

The authorities concerned are to make the adjustment by agreement if possible—for a form of agreement see Encyclopædia of Forms and Precedents, Vol. X., p. 236—if they cannot agree the matter will go under the next sub-section to an arbitrator.

Later legislation as to "adjustments."

"Property," "liabilities," and "expenses" are defined by s. 100, *post*, p. 785. In deciding what matters form the subject of a legal claim upon an adjustment consequent upon an alteration of area and the principles to be followed by an arbitrator in making the adjustment, reference must now be made to the Local Government (Adjustments) Act, 1913, p. 1082, *post*, the main effect of which (so far as the present work is concerned) is to modify to a great extent the principles laid down in the *Caterham* and *West Hartlepool* decisions, *infra*. Various decisions under the present and similar sections prior to 1913 are briefly referred to below, but in view of the *Caterham Case* and the new statutory provisions, many of them are of little value. As to the construction of the Act of 1913, see the Act, *post*, and *Queenborough Corporation* v. *Sheppey R. D. C.*, [1915] 1 K. B. 356; 79 J. P. 155.

Decisions as to adjustments.

In *Re Llanwonno School Board and Ystradyfodwg School Board* (1898), 62 J. P. 644, that part of the parish of L. which contained the school was transferred to Y., which was to take over all liabilities in respect of the school: it was held that an arbitrator could consider a claim by L. in respect of it having recently enlarged the school out of income. In *Re Bucks C. C. and Herts C. C.*, [1899] 1 Q. B. 515; 63 J. P. 356, where a part of B. containing no main roads or county bridges was transferred to H., it was held that B. could claim in respect of a loss of area which contributed to the rates without calling for any outlay. In *Re Rochdale and Haslingden Unions*, [1899] 1 Q. B. 540, upon an alteration of the boundary of two unions it was held that any consideration bearing on the question whether the claimant union had been damaged financially by the change must be taken into account; see also to the same effect, *St. Thomas R. D. C.* v. *Heavitree U. D. C.* (1902), 66 J. P. 597; 86 L. T. 153. The *Bucks Case* and the *Rochdale Case* were, however, expressly overruled in *Caterham U. D. C.* v. *Godstone R. D. C.*, [1904] A. C. 171; 68 J. P. 429. There a parish forming part of a rural district was converted into an urban district by an Order of the county council, confirmed by the L. G. B. Before such Order was made the rural district council received from rates levied in the parish for highway purposes sums greater than those expended in respect of the maintenance and repair of the highways in the parish. It was held that the loss of the surplus of the rates received over the sums expended upon the maintenance and repair of the roads within the parish was not a matter requiring adjustment under s. 62, *supra*. The adjustments to be made were to be limited to adjustments of ascertained and existing property, such as buildings, income derived from trust property or charities, or the proceeds of a rate already made, and of extant debts, liabilities, or expenses actually owing or incurred. The *Caterham Case* was followed and applied in *West Hartlepool Corporation* v. *Durham C. C.*, [1907] A. C. 246; 71 J. P. 385, where on the creation of a new county borough it was held that the county had no claim against the borough in respect of its no longer contributing towards the cost of main roads, county bridges,

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salaries, law charges, registration expenses, etc., and that the borough had no counterclaim in respect of children in industrial schools and reformatories, subsidised roads and fines.

Part of a county was transferred to a burgh under an Act which provided for the apportionment of certain existing county debts; it was held that this express limited provision indicated a clear intention that no other debts should be apportioned (*Inverness C. C.* v. *Inverness Magistrates*, [1909] S. C. 386). The *Caterham Case, supra*, was distinguished in *Midlothian C. C.* v. *Musselburgh Magistrates*, [1911] S. C. 463, where it was held on the extension of a borough that an existing county loan was a "liability" which must be apportioned, and that a claim for such apportionment was not bad as being a claim for compensation for loss of area. In *Lanark C. C.* v. *Motherwell Magistrates*, [1912] S. C. 1251, it was held that an arbitrator need not necessarily make his apportionment according to the rateable values of the areas taken and retained, but might choose his own method so long as the court could not say that such method was clearly a wrong one.

See *Wolstanton U. D. C.* v. *Tunstall U. D. C.*, [1911] 1 Ch. 229; 75 J. P. 203, for a case where an action between several councils as to their liabilities in respect of a joint hospital was referred to an arbitrator in order that he might make all necessary adjustments under this section; and see *North Riding C. C.* v. *Middlesbrough Borough Council*, [1914] 2 K. B. 847; 78 J. P. 257, as to the "redemption" of contributions under s. 32 (3) of this Act when a county borough is made a quarter sessions borough. See *Glamorgan C. C.* v. *Cardiff and Swansea Corporations*, [1915] 3 K. B. 438; 79 J. P. 505, and *Re Northumberland C. C. and Tynemouth Corporation* (1916), 80 J. P. 17, as to the consideration to be attached to the cost to the various areas of maintaining main roads in apportioning under s. 32 (6) the proceeds of the local taxation licences and estate duty grants.

The provisions for adjustment apply when an entirely new district is formed, as well as when the areas of two existing districts are altered (*St. Thomas R. D. C.* v. *Heavitree U. D. C.*, *ante*, p. 776). Where part of a local government area is transferred to another area, the adjustment must be made as between the two new areas and not as between the old divided area and the transferred portion (*In re Rochdale Union and Haslingden Union*, *supra*).

As to when an agreement as to certain matters bars a claim for adjustment in respect of other matters, see *St. Thomas R. D. C.* v. *Heavitree U. D. C.*, *ante*, p. 776.

A district which had previously formed part of a rural district was in 1900 constituted a separate urban district. After negotiations as to the adjustment of the property, income, debts, liabilities and expenses affected by the separation, under the L. G. A., 1888, s. 62, an agreement was come to whereby a considerable sum was to be paid by the urban council to the rural council in settlement of (among other claims) an estimated annual loss in income owing to the transfer of rateable area from the rural district to the urban district. The urban council afterwards brought an action against the rural council, in which they alleged that the agreement was *ultra vires* and not binding upon them, as, according to the decision in the *Caterham Case*, *ante*, p. 776, the rural council was not entitled to any payment as compensation for loss of area:—*Held*, that the agreement having been made bonâ fide between the councils in settlement of their respective claims, the fact that one of the claims put forward bonâ fide by one of the parties was not well founded in law was no ground for setting aside the compromise, and that the action failed:—*Held*, also, that the defendants were not entitled to costs as between solicitor and client, under the Public Authorities' Protection Act, 1893, the action not being brought by the plaintiffs for any act done by the defendants (*Holsworthy U. D. C.* v. *Holsworthy R. D. C.*, [1907] 2 Ch. 62; 71 J. P. 330. See also on the main point, *Att.-Gen.* v. *Essex C. C.* (1907), 71 J. P. 557; 24 T. L. R. 22).

An action was commenced against a rural district council for an injunction to restrain the continuance of a nuisance caused by sewage matter passing into a stream which flowed through the plaintiff's grounds. Whilst it was pending that portion of the council's district in which the sewage arose and the sewer ran, was transferred to an adjoining borough by a Provisional Order which provided that any action then pending against the rural council might be continued against the corporation, and that all liabilities attaching exclusively to the added area should be transferred to the corporation. The plaintiff's grounds were not in the added area. The action was discontinued on an undertaking being given by the defendants, and a question arose as to who should bear the costs. It was held that the action was one pending in relation exclusively to the added area and that the costs be borne by the borough (*Jackson* v. *Plympton St. Mary R. D. C.* (1900), 64 J. P. 168).

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On a case stated under s. 29, *ante*, p. 759, the court has no jurisdiction to decide questions of adjustment under this section (*In re Salop C. C.* (1891), 65 L. T. 416).

The commissioners referred to in the text were appointed under s. 61. Their term of office expired on June 30th, 1892.

(2) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

As to the power of the Ministry of Health to appoint an arbitrator in a case where an existing adjustment between a county and a county borough has become inequitable under s. 32 (6), see *R.* v. *Minister of Health*, [1921] 1 K. B. 1; 85 J. P. 49.

Where an order of a county council has not in fact provided for the adjustment of property, debts, and liabilities under s. 59 (4) (e), an arbitrator may be appointed under this sub-section (*In re Sowerby U. D. C. and Mytholmroyd U. D. C.* (1896), 74 L. T. 313; 12 T. L. R. 300). But *semble* if it provides for adjustment of certain liabilities it may be held to exclude by inference a claim in respect of any others (*cf. Inverness C. C.* v. *Inverness Magistrates*, p. 777, *ante*). See, as to arbitrations, the next sub-section.

(3) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

A single arbitrator is to be appointed. By the 8 & 9 Vict. c. 18, s. 25, his appointment is to be delivered to the arbitrator, and is to be deemed a submission to arbitration by the parties. Neither party can revoke the appointment without the consent of the other. By s. 26, if the arbitrator dies or becomes incapable, another may be appointed, and in such a case s. 29 provides that the new arbitrator shall begin de novo. By s. 32, the arbitrator may call for the production of documents by either party, and may examine witnesses on oath. By s. 33, before he enters on the arbitration, he must make the declaration therein mentioned, and such declaration is to be annexed to the award. Any act of an arbitrator contrary to the declaration is a misdemeanor. By s. 35, the arbitrator is to deliver his award in writing, and allow the parties to inspect it at any time. By s. 36, the award may be made a rule of court. The award must be made within twenty-one days from the arbitrator's appointment, unless the time is extended as provided by s. 31. By s. 37, no award is to be set aside for irregularity or error in matter of form. The provisions in the Lands Clauses Acts, as to costs, will not apply. The costs are to be determined by the arbitrator, who will, apparently, have a discretion in awarding them, and the text gives him full power to disallow certain costs. See the sections of the Lands Clauses Acts in extenso, in App. I., *post*, Vol. II.

The arbitrator should determine by his award by whom the costs of the reference as well as of the award should be paid. If the award deal with the costs of the award, but not of the reference, no action lies for the costs of the reference (*South Mimms R. D. C.* v. *Barnet U. D. C.* (1900), 82 L. T. 421). If an arbitrator, through ignorance of the law as to his power to award as to costs, fails to deal with the costs, the court may, on evidence before it of the arbitrator showing his error, remit the award for him to deal with the question of costs (*In re Baxters and Midland Rail. Co.* (1906), 70 J. P. 445; 95 L. T. 20).

(4) Any award or order made by the Commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided. Section 62.

As to what may be provided for by agreement, see sub-s. (1), *supra*.

(5) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

The expression "council" apparently includes a district council, *i.e.*, an urban or rural district council (see s. 100, *post*, p. 785).

(6) The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

(7) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

63. Where the Local Government Board *are required in pursuance of this Act to decide* any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act. Arbitration by Local Government Board.

For the Local Government Board must now be read the Ministry of Health.

For the words in italics there must now, under the Local Government (Determination of Differences) Act, 1896, *post*, p. 1002, be substituted the words "determine as arbitrators": see the note to s. 11 (3), *ante*, p. 741.

The provisions of the Regulation of Railways Act, 1868, above referred to, are contained in ss. 30—32 of that Act, which are set out in full in App. I., *post*, Vol. II. Under these, as applied by the above section, the L. G. B. (now the M. of H.) may appoint an arbitrator whose award or decision may be that of the Board. The Board may fix the remuneration of the arbitrator. Section 32 incorporates the Railway Companies Arbitration Act, 1859, ss. 18—29, the effect of which is shortly as follows: Section 18 empowers the arbitrator to call for books and documents and to administer oaths. Section 19 gives him discretion as to the manner of proceeding with the

Note to Section 63.

arbitration. Section 20 enables him to proceed in the absence of parties. Section 21 enables him to make several awards each on part of the matters referred. Section 22 makes the award conclusive. Section 23 gives the arbitrator power to extend the time for making an award. Section 24 prevents the setting aside of an award for irregularity. Section 25 provides that parties shall obey award. Section 26, that all courts shall give effect to awards. Section 27, that costs shall be in the discretion of the arbitrator. Section 28, that in the absence of any order, costs are to be borne by parties equally. Section 29, that submission may be made a rule of court.

PART IV.

FINANCE.

* * * * * *

Local Financial Year and Annual Budget.

Fixing of local financial year and consequent adjustments.

73.—(1) *After the appointed day, not being more than three years after the passing of this Act* (*a*), the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, *but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year.*

(*a*) The appointed day was defined by s. 109, *post*, p. 787. Words italicised were repealed by the S. L. R. A., 1903.

(2) All enactments relating to accounts of local authorities, or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

The above provision applies to urban and rural district councils.

Accounts of district councils, and of their committees and officers, are required to be made up yearly to March 31st, or in the case of accounts which are required to be audited half-yearly, then half-yearly to that date and September 30th in each year and in such form as the L. G. B. (now the Ministry of Health) prescribe (L. G. A. 1894, s. 58).

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PART V.

SUPPLEMENTAL.

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Regulations for Bicycles, etc.

Regulations for bicycles, etc.

85.—(1) *The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act*, 1878, *and* section twenty-three, sub-section one, of the Municipal Corporations Act, 1882, in so

far as it gives power to the council to make byelaws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts, in so far as they give power to any local authority to make byelaws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed (*a*), and bicycles, tricycles, velocipedes, and other similar machines (*b*) are hereby declared to be carriages within the meaning of the Highway Acts (*c*); and the following additional regulations (*d*) shall be observed by any person or persons riding or being upon such carriage: Section 85.

(a) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage;

(b) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriageway, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

(2) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence, forfeit and pay any sum not exceeding forty shillings (*e*).

(*a*) Italicised words repealed by the S. L. R. A., 1908. The Highways and Locomotives (Amendment) Act, 1878, s. 26 (5), enabled a county authority to make byelaws regulating the use of bicycles. The Municipal Corporations Act, 1882, s. 23, enables the council of a borough to make byelaws for the good rule and government of the borough, and for the prevention and suppression of nuisances not otherwise summarily punishable in the borough; and under this section byelaws regulating the use of bicycles and tricycles were made in many boroughs. These byelaws varied greatly; not only were they different in different counties, but county byelaws were in many cases different from those in force in the various boroughs within the county, and these again from one another. The text repeals the above sections so far as regards the power to make byelaws for bicycles, tricycles, etc., and substitutes a general enactment for the byelaws previously in force. And it is to be observed that when a byelaw is made under an Act the repeal of the Act abrogates the byelaw unless it is preserved by means of a saving clause or otherwise. Thus a byelaw relating to bicycles made under a local Act was held to be repealed by the provision in the text (*Watson* v. *Winch*, [1916] 1 K. B. 688; 80 J. P. 149).

By the Lights on Vehicles Act, 1907, existing byelaws with regard to the lighting of vehicles (other than, *inter alia*, bicycles, tricycles, or velocipedes), which varied considerably in different districts, were replaced by a statutory requirement applying uniformly throughout the country.

(*b*) The Highways and Locomotives (Amendment) Act, 1878, s. 26, referred only to bicycles, and it was generally understood that the county byelaws did not extend to tricycles. The text avoids possibility of doubt on the subject.

(*c*) It had already been held that a bicycle was a carriage within the meaning of the Highway Act, 1835, s. 78, and that its rider might be convicted under that section of furious "driving" of it (*Taylor* v. *Goodwin* (1879), 4 Q. B. D. 228; 43 J. P. 653). But in a later case it was held that a bicycle was not a carriage liable to toll under a Turnpike Act (*Williams* v. *Ellis* (1880), 5 Q. B. D. 175; 44 J. P. 394). *Cf. Parkyns*

Note to Section 85.

v. *Priest* (1881), 7 Q. B. D. 313; 45 J. P. 751. The text now expressly declares that they shall be deemed to be carriages within the meaning of the Highway Acts. As such they are subject to various provisions which impose penalties for such offences as negligently, or by wilful misbehaviour, causing hurt to any person, horse, cattle, or goods; not keeping the left or near side of the road on meeting any other carriage; negligently, or by wilful misbehaviour, preventing the free passage of any person, carriage, etc.; driving furiously so as to endanger the life or limb of any passenger. See *McKee* v. *McGrath* (1892), 30 L. R. Ir. 41; *Yeldham* v. *Carpenter* (1913), 47 Ir. L. T. 186; and *Chatterton* v. *Parker*, [1914] W. N. 206, as to furious driving; and *cf.* the Locomotives on Highways Act, 1896, s. 1 (1) (b), as to light locomotives; *Smith* v. *Boon* (1901), 65 J. P. 486; 84 L. T. 593; and *Mayhew* v. *Sutton* (1901), 71 L. J. K. B. 46; 86 L. T. 18.

The provision in the text does not, however, remove difficulties which arise in the construction of private Acts. See *Cannan* v. *Abingdon* (*Earl of*), [1900] 2 Q. B. 66; 64 J. P. 505; *Simpson* v. *Teignmouth and Shaldon Bridge Co.*, [1903] 1 K. B. 405; 67 J. P. 65; *Smith* v. *Kynnersley*, [1903] 1 K. B. 788; 67 J. P. 125.

A bicycle has been held to be a "vehicle" within the meaning of a local Act against the use of vehicles for the display of advertisements without the consent of the local authority (*Ellis* v. *Nott Bower* (1896), 60 J. P. 760; 13 T. L. R. 35); and within the meaning of the Offences against the Person Act, 1861, s. 35 (*R.* v. *Parker* (1895), 59 J. P. 793).

It has been held that a motor bicycle is a carriage within the meaning of the Customs and Inland Revenue Act, 1888, s. 4 (3) (*O'Donoghue* v. *Moon* (1904), 68 J. P. 349; 90 L. T. 843).

(*d*) These additional regulations are of universal application, and supersede the provisions of the repealed byelaws. There is no power to arrest without warrant for breach of these regulations (*Hatton* v. *Treeby*, [1897] 2 Q. B. 452; 61 J. P. 586). Sunset and sunrise are to be taken according to local time, not Greenwich mean time (*Gordon* v. *Cann* (1899), 68 L. J. Q. B. 434; 63 J. P. 324). *Cf.* the Locomotives on Highways Act, 1896, ss. 2, 3, as to light locomotives.

(*e*) This penalty will be recoverable by conviction on information before a court of summary jurisdiction.

Adaptation of Acts.

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Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries and Provisional Orders.

87.—(1) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

See the sections above referred to, *ante*, pp. 626—629, and the Local Government (Determination of Differences) Act, 1896, *post*, p. 1002.

This sub-section and sub-s. (5), *infra*, are applied by the Education Act, 1902, s. 23 (9), to any order, consent, sanction or approval which the L. G. B., now the Ministry of Health, are authorised to make or give under that Act. The same sub-sections are made applicable by the Local Authorities (Treasury Powers) Act, 1900, s. 1 (4), with a view of enabling the L. G. B. (now the M. of H.) to carry out the powers transferred to them by that Act.

(2) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of Provisional Orders by the Local Government Board), shall apply for

the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto. Section 87.

See the sections above referred to, *ante*, pp. 629, 632.

It was held that the above sub-section had the effect of bringing the costs incurred in opposing a Provisional Order Bill within the saving enacted by the Borough Funds Act, 1872, s. 8 (*Brooks, Jenkins & Co.* v. *Torquay Corporation*, *ante*, p. 403). See now the Borough Funds Act, 1903, s. 7 (1), as to the power to oppose Bills.

It is understood that in the opinion of the L. G. B. the costs of parish councils as well as those of urban and rural district councils in opposing Provisional Orders under the Act of 1888 must now be allowed by the L. G. B., now the Ministry of Health, before being paid.

(4) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

See for example, s. 57 (1), (2), *ante*, pp. 770, 772.

(5) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

As to the payment of these expenses, see the P. H. A., 1875, s. 298, *ante*, p. 632.

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Savings.

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97. Nothing in this Act with respect to main roads shall alter the liability of any person or body of persons, corporate or unincorporate, not being a highway authority, to maintain and repair any road or part of a road. Saving as to liability for main roads.

This section was inserted to preserve the liability of persons or corporations to repair roads which have or may become main roads, when such roads were previously repairable by them *ratione tenuræ* or by prescription, or under an Act of Parliament, such as the Railway Clauses Acts, which impose on railway companies the duty of repairing roads in some cases.

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Definitions.

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100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say: Interpretation of certain terms in the Act.

Section 100.

The expression "county" does not include a county of a city or county of a town:

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties:

The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division:

The expression "administrative county" means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough:

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts:

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city:

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882:

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the city of London, means the court of the mayor and aldermen in the inner chamber:

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part:

The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same meaning as in Registration Act, 1885, and the Acts therein referred to:

The expression "Secretary of State" means one of her Majesty's Principal Secretaries of State:

The expression "Treasury" means the Commissioners of her Majesty's Treasury:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day (*a*):

The expression "guardians" means guardians elected under the Poor

Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834: Section 100.

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians:

The expressions "district council" (*aa*) and "county district" (*aa*) mean respectively any district council established for purposes of local government under an Act of any future session of Parliament, and the district under the management of such council, *and until such council is established, mean respectively:*

(*a*) *as regards the provisions of this Act relating to highways and main roads, a highway authority and highway area; and*

(*b*) *save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act,* 1875, *and the district of such authority:*

The expression "highway area" means, as the case may require, an urban sanitary district (*b*), *a highway district, or a highway parish not included within any highway or urban sanitary district:*

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties:

The expression "urban authority" means, *until the establishment of district councils as aforesaid, an urban sanitary authority; and after their establishment,* the district council of an urban county district:

The expression "rural authority" means, *until the establishment of district councils as aforesaid, a rural sanitary authority; and, after their establishment,* the district council of a rural county district:

The expression "person" includes any body of persons, whether corporate or unincorporate:

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs, be that value, and subject thereto shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate:

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including

Section 100.

things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions (*c*):

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities:

The expression "duties" includes responsibilities and obligations:

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose (*c*):

The expression "powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act:

The expression "expenses" includes cost and charges:

The expression "costs" includes charges and expenses:

The costs of assizes and of quarter and petty sessions includes such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices and other officers, the costs of the jury list, the costs of rewards ordered to be paid by the court, the costs of prosecutions including the costs of the defendant's witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, *but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of prisoners committed for trial from the borough:*

The expression "assizes" includes the Central Criminal Court:

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer:

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly (*d*):

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey:

The expression "County and Borough Police Act, 1856," means the Act of the session of the nineteenth and twentieth years of the reign of her present Majesty, chapter sixty-nine, intituled "An Act to render more effectual the police in counties and boroughs in England and Wales," and the expression "County and Borough Police Acts"

means the County and Borough Police Act, 1856, and the Acts therein recited : Section 100.

The expression " main road," when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority (*e*).

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place.

No attempt has been made to eliminate definitions which may not be strictly applicable for the purposes of this Work. Italicised portions have been repealed by either the S. L. R. A., 1908, or the Costs in Criminal Cases Act, 1908.

(*a*) As to the appointed day, see s. 109, *infra*.

(*aa*) See definitions of "district council" and "county district" in the L. G. A., 1894, s. 21 (3), *post*, p. 927.

(*b*) It will be remembered that quarter sessions boroughs are now urban sanitary areas within the meaning of the Highways and Locomotives (Amendment) Act, 1878. See ss. 35 (3) and 38 (3), *ante*, pp. 762, 764.

(*c*) See the cases collected in the note under s. 62, *ante*, p. 776. It was held that this definition did not extend to a case in which it was sought to make a local authority responsible for a negligent act of their predecessors. See *Nash* v. *Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57.

(*d*) In *Legg* v. *Stoke Newington Vestry* (1895), 59 J. P. 696, in actions for compensation for pecuniary loss by abolition of office under a local Act, DAY, J., held that a sanitary inspector, clerk to the sanitary committee, messenger, hall porter, and office boy, appointed by a vestry, were "officers" within the meaning of the provisions for compensation and not merely servants. See also *R.* v. *Bridgwater* (1837), 6 A. & E. 339; *R.* v. *Armagh U. D. C.*, [1901] 2 I. R. 28, and other cases cited in the note to the L. G. A., 1894, s. 81 (7), *post*, p. 989.

(*e*) The provisions of the Act as to main roads, so far as they are within the scope of this Work, are contained in ss. 11, 34, 35 and 38, *ante*.

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PART VI.

TRANSITORY PROVISIONS.

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Appointed Day.

109.—(1) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections or for different counties. Appointed day.

(2) [*Temporary.*]

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Section 120.

Existing Officers.

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Existing officers.

120. . . .

This section is incorporated in the L. G. A., 1894, s. 81, and instead of being set out here it has been inserted in the notes under *ibid.*, s. 81 (7), *post*, p. 989.

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Savings.

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Saving for charters, local Acts, etc.

125. Save so far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder, nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by Parliament which immediately before the passing of this Act was in force.

For an illustration of the effect of this section upon a local Act, see *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566.

As to the amendment of local Acts by order of the county council, see s. 59 (4), *ante*, p. 774.

Repeals.

Repeal of Acts.

126. All enactments inconsistent with this Act are hereby repealed ; Provided that—

(1) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act :

(2) *This repeal shall not affect—*

(*a*) *The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed ; or*

(*b*) *Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed ; or*

(*c*) *Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or*

(*d*) *Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.*

Italicised words repealed by the S. L. R. A., 1908. See also the Interpretation Act, 1889, ss. 11, 38.

THE PUBLIC HEALTH (BUILDINGS IN STREETS) ACT, 1888.

Section 1.

(51 & 52 VICT. c. 52.)

An Act to amend the Public Health Acts in relation to Buildings in Streets. [24th December 1888.]

Whereas the provisions of the Public Health Act, 1875, with respect to bringing forward houses or buildings in streets are defective, and it is expedient to make further provisions in relation thereto:

Short titles and construction.

1. This Act may be cited as the Public Health (Buildings in Streets) Act, 1888, and this Act and the Public Health Act, 1875, and the Public Health (Water) Act, 1878, and the Public Health (Interments) Act, 1879, and the Public Health (Fruit Pickers' Lodgings) Act, 1882, and the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and the Public Health (Confirmation of Byelaws) Act, 1884, and the Public Health (Officers) Act, 1884, and the Public Health (Ships, etc.) Act, 1885, and the Public Health (Members and Officers) Act, 1885, may be cited together as the Public Health Acts, and this Act shall be construed as one with the Public Health Act, 1875.

The Act is simply a single enactment to replace s. 156 of the P. H. A., 1875, which, as the preamble states, had been found to be defective. The collective title "the Public Health Acts" is now more comprehensive: see the Short Titles Act, 1896. The effect of the provision that the Act is to be construed as one with the P. H. A., 1875, would appear to be to keep alive the exemption contained in s. 157 of the last-mentioned Act in favour of "buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament."

If a rural district council desire to have the powers of this Act they must apply to the Ministry of Health for the necessary order under s. 276 of the Act of 1875.

See also the note to s. 156 of that Act, p. 327.

Interpretation.

2. In this Act, unless the context otherwise requires, words and expressions to which meanings are assigned by the Public Health Act, 1875, have in this Act the same respective meanings.

The effect of this provision is to give words used in this Act the meanings assigned to them by the P. H. A., 1875, s. 4, *ante*, p. 3. See, however, note (*c*) to the next section.

Buildings not to be brought forward.

3. Section one hundred and fifty-six of the Public Health Act, 1875, is, save as hereinafter mentioned, hereby repealed (*a*), and in lieu thereof it is hereby enacted that it shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building (*b*) in any street (*c*), or any part of such house or building, beyond the front main wall of the house or building on either side thereof in the same street (*d*), nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority (*e*).

Section 3.

Provided that the repeal by this Act enacted shall not affect anything duly done or suffered, or any right or liability acquired, accrued, or incurred, or any security given under the section hereby repealed, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against such section, or any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

(*a*) Section 156 of the P. H. A., 1875, provided as follows: It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same. Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. It was held, with reference to this section, that the expression "house or building" did not include new buildings in course of erection upon land never before built upon (*Williams* v. *Wallasey L. B.* (1886), 16 Q. B. D. 718; 59 J. P. 582); and in consequence of this decision the enactment in the text was passed. It may be taken that this enactment has no application to cases coming within s. 155 of the P. H. A., 1875 (see *Lord Auckland* v. *Westminster District Board of Works* (1872), L. R. 7 Ch. 597); but, *semble*, that section does not apply where after buildings have been taken down the site has been so long left vacant that it appears that the intention of rebuilding has been abandoned (*Worley* v. *St. Mary Abbots, Kensington* (*Vestry of*), [1892] 2 Ch. 404).

Consent.

(*b*) A local authority could not justify making a charge for giving their consent (*Southwark Borough Council* v. *Partington Advertising Co.* (1905), 69 J. P. 183; 3 L. G. R. 505).

It should be observed that mere acquiescence does not amount to a written consent for purposes of this section. See *per* JESSEL, M.R., in *Kerr* v. *Corporation of Preston* (1876), 6 Ch. D. at p. 468. The written consent need not be under seal. Where plans showing that the building line was infringed were passed, and stamped as approved, by a committee whose proceedings were subsequently ratified by the council, it was held that this was a sufficient consent for the purposes of the section (*Mullis* v. *Hubbard* [1903] 2 Ch. 431; 67 J. P. 281). And if projections beyond the line are shown on the plans approved by the council, the approval may be considered a written consent within the section, although the attention of the council was not specifically called to the projections (*Merrett* v. *Charlton Kings U. D. C.* (1903), 67 J. P. 419). The fact however, that an official of the council has led a builder to think that his building will be consented to will not avail the builder if the council disregard the advice of their official and refuse consent: see *Att.-Gen.* v. *Wimbledon House Estate Co.*, *post*, p. 794.

"House or building."

By the P. H. A., 1875, s. 4, which must be read into this Act (see s. 2, *ante*, p. 789) the expression "house" includes schools, also factories and other buildings in which persons are employed. There is no definition of the word "building." See decisions as to what is a house or a building, *ante*, p. 20. Whether a structure is a building within the meaning of the present section or not is a question of fact to be determined by the justices, provided the thing erected is of such a nature that it is capable of being a building. A wooden structure used for advertising purposes was 9 feet 6 inches long, 3 feet wide, and 7 feet high; was roofed over, and had a glass front, and a door by which to enter; and was fastened to the ground by four posts, sunk to the depth of 9 to 12 inches; it was held to be of such a nature that it was capable of being a building within the meaning of this section (*Brown* v. *Leicester* (*Mayor, etc. of*) (1892), 62 L. J. M. C. 22; 57 J. P. 70); see also *R.* v. *Gregory* on p. 22, *ante*. As to hoardings, see *Paddington Borough Council* v. *Att.-Gen.*, [1906] A. C. 1; 70 J. P. 4; referred to at p. 24, *ante*; in the judgment of BUCKLEY, J., in this case the previous authorities are cited and discussed (see *Boyce* v. *Paddington Borough Council*, [1903] 1 Ch. 109; 67 J. P. 23).

The owner of a house, which was situate in a street in an urban district, and had a small garden in front, erected, without consent, in front of the door a porch of wood and glass and roofed with felt, projecting 6 feet 6 inches beyond the front main wall

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the house. The porch was not attached to the house, and stood on wheels. The owner was summoned under this section for building an "addition to the house" without consent, etc., but the magistrates dismissed the summons on the ground that the porch did not constitute an addition to the house. It was held, that the court could not say that in so deciding the magistrates had gone wrong in law, and that therefore their decision must stand (*Sunderland Corporation* v. *Charlton* (1913), 77 J. P. 126; 11 L. G. R. 484).

There have been many cases as to whether particular erections were "buildings or structures" within the meaning of the London Building Act, 1894, s. 22. A glass and iron portico or shelter which projected beyond the general line of the street, and was dovetailed into the main structure of the building, was held to be such a building or structure (*Coburg Hotel Co.* v. *London C. C.* (1899), 63 J. P. 805; 81 L. T. 450). An advertising company affixed upon the front wall of a building advertisement cases, constructed of iron and supported by iron supports pinned through the wall. The outer sides were covered with wooden frames carrying canvas lined with advertisements, and provision was made for illuminating the interiors with electric light. The cases, which varied in width and height, projected ten inches in front of the front wall of the building beyond the building line, but less than the existing cornice over the shop, which was two feet beyond the building line: it was held (WILLS, J., *dissentiente*), that the cases were not structures within the meaning of s. 22, *supra* (*London C. C.* v. *Illuminated Advertisements Co.*, [1904] 2 K. B. 886; 68 J. P. 445). The last-mentioned case was followed where the erection complained of was a shelter hung from the front wall of a building by two stay rods, and secured to the wall at the bottom by six bolts. The shelter consisted of an iron framework filled in on the front and sides with leaded glass, and covered on the top with zinc. There were letters on the glass made visible by night by lights arranged within the shelter (*London C. C.* v. *Schewzik*, [1905] 2 K. B. 695; 69 J. P. 409; and it was again followed where a firm of milliners erected on the steps and landing leading to the front door in the front main wall of their premises a show case which took the place of a shop front and projected beyond the general line of buildings. The houses in this part of the street had bay windows in front of the general line of buildings and the show case was slightly in front of the bays (*London C. C.* v. *Hancock and James*, [1907] 2 K. B. 45; 71 J. P. 268). See also *Tunmer* v. *Partington Advertising Co.* (1904), 68 J. P. 318; and see *Hull* v. *London C. C.*, [1901] 1 K. B. 580; 65 J. P. 309, to the effect that advertisement cases are not "projections" within the meaning of the London Building Act, 1894, s. 73 (8). As to the section of the street which may be taken into account in defining the general line of buildings in a block forming part of the street, see *L. C. C.* v. *Galsworthy*, [1918] A. C. 851; 82 J. P. 297.

"Street."

(*c*) The word "street," as defined by the P. H. A., 1875, s. 4, *ante*, p. 15, includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. This definition is incorporated by s. 2, *ante*, p. 789, and consequently the Act might be construed as applying to any road, public or private, whether it has acquired the character of a street in the ordinary acceptation of the term or not. Indeed, it was the very object of the Act to enable an urban authority to exercise some control over the line of buildings in new streets. It has, however, apparently been decided that the question whether a road is a street within the meaning of the section is one of fact and also of degree, as it may be a street at one end, though at the other still a country road (*Att.-Gen.* v. *Siddall* (1898), Times, June 24th); and in the repealed s. 156 the word *street* had its ordinary signification, not the wider meaning (see *R.* v. *Fullford* (1864), 33 L. J. M. C. 122; 28 J. P. 357). The Act is defective to this extent, that there will be no control over the earliest buildings in the street, and these may really fix the line for the rest of the street. Thus in *R.* v. *Middlesbrough Corporation* (1890), Times, July 7th, Lord COLERIDGE, C.J., and WILLS, J., granted a *mandamus* to the corporation to approve plans for a house to be erected in a new street where there were no other houses on either side thereof in the same street except one at a distance of 800 feet. See, however, as to the granting of a *mandamus*, *R.* v. *Eastbourne Corporation* and *R.* v. *Chiswick U. D. C.*, *post*, p. 793.

A house at the corner of two streets may be in both streets for the purposes of this enactment (*Gilbert* v. *Wandsworth District Board of Works* (1888), 53 J. P. 229; 60 L. T. 149: see also *London C. C.* v. *Lawrance*, [1893] 2 Q. B. 228; 57 J. P. 617).

Front main wall of house on either side

(*d*) The respondent began to erect the front main wall of a new house in a street. At that time B. had raised the front main wall of a new house, which he was erecting on the same side of the street to the height of five inches above the ground. It did

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—— thereof in the same street.

not appear to what extent the other walls of B.'s house had been built, or that they were connected with the front main wall. There was a distance of about 300 or 400 feet between the two houses, and there was no other house between them. The front main wall of the respondent's house was six feet nearer the roadway than that of B.'s house. It was held that the respondent had not committed an offence against this enactment (*Ravensthorpe L. B.* v. *Hinchcliffe* (1889), 24 Q. B. D. 168; 54 J. P. 421). The grounds of this decision were: (1) that there was not, when the respondent began to build, any front main wall of a house or building on B.'s land; and (2) that the words "house on either side thereof" mean "a house within some near distance, within some degree of proximity, and not one standing some considerable distance away": *per* FRY, L.J. See, as to the second point, *Barlow* v. *Kensington* (*Vestry of*) (1885), 11 App. Cas. 257. And see *R.* v. *Middlesbrough Corporation, supra*; *Ellis and Ruislip Northwood U. D. C., In re*, [1920] 1 K. B. 343; 83 J. P. 273.

At the junction of the O. and C. roads a house was erected abutting on the footpath of C. road. The main entrance of the house was in O. road. At a distance of sixty-four feet from the back wall of the premises attached to the house in C. road was situated a row of eleven small cottages set back eight feet from C. road. The justices on an information against the owner of the house, under this Act, held that the house in question was in both C. and O. roads, that the cottages were buildings on one side of the house within the meaning of the section, and convicted the owner. It was held that it was a question of fact for the justices whether the house in question was or was not in both roads, and also whether the cottages were sufficiently near to the house to be on one side thereof within the meaning of the Act, and that the conviction must be affirmed (*Warren* v. *Mustard* (1891), 61 L. J. M. C. 18; 56 J. P. 502).

In considering what is the front main wall of a house or building for the purposes of this section, and whether such house or building is on either side of, or in the same street as, a house or building in course of erection, all the circumstances of the case must be taken into consideration. The building must be looked at as a whole: its character, its position, its distance from the house or building which is being erected or brought forward in alleged contravention of the section must be considered; a particular wing or other projection must not be selected, the front of which is to be treated as the front main wall which is to give the governing line; nor are two buildings necessarily in the same street because one faces the same road or street, or a continuation of the same road or street, as the other (*Att.-Gen.* v. *Edwards*, [1891] 1 Ch. 194).

As the section prohibits a house or building being brought forward beyond the front main wall of the house or building "on either side thereof," this includes a case where there are buildings only on one side of the proposed new house or building (*Leyton L. B.* v. *Causton* (1893), 57 J. P. 135). The occupier of a corner house put up a shop front (in front of his own main wall) which projected beyond the front main wall of the house on one side of it, but did not project beyond the front main wall of the house on the other side, which was separated from the corner house in question by a cross street. It was held that the provisions of this section had been contravened (*Anderson* v. *Richards* (1906), 70 J. P. 231; 4 L. G. R. 404). See also *London C. C.* v. *Lawrance*, *ante*, p. 791. Every case under the section must be determined with regard to its own particular circumstances. In 1856, a road was laid out on a building estate and from time to time houses were built on the east side of the road so as to form a continuous line of buildings close up to that side of the road. In 1893, T. built a house on the west side of the road, set back more than ten feet from the roadway, and in 1894 he bought a strip of land along the west side of the road to the north of his house, with the object of erecting cottages on it. The building plans showed that the cottages would be ninety feet distant from T.'s house and would be set back ten feet from the roadway, but nearer thereto than his house. The local board refused to approve of the plans for that reason. It was held that a rule *nisi* for a *mandamus* to the board to approve the plans must be made absolute, as there was no necessity that the cottages should under the circumstances be in a line with T.'s house (*R.* v. *Ormesby L. B.* (1894), 43 W. R. 96). It is immaterial that adjoining property may be injured by the erection of the proposed buildings if the section is inapplicable upon the facts as to the buildings. Thus, where houses on one side of a proposed new building were set back sixty-two feet from the roadway, and it was proposed to erect a new house at a distance of twenty-one feet only from the roadway so as to project in front of the other houses which would considerably diminish their value, the court, holding that they were not on the facts houses in the same street on the side of the proposed new house, made absolute a rule directing the local board to approve of the plans for the proposed new

house (*R.* v. *Fulwood L. B.*; *Ex parte Livesey* (1895), 59 J. P. 311; 72 L. T. 592). It has now, however, been decided that a *mandamus* will not be granted to compel a local authority to approve plans of a proposed building which the local authority has in good faith refused to approve on the ground that the building would contravene the provisions of this Act (*R.* v. *Eastbourne Corporation* (1900), 64 J. P. 724; 83 L. T. 338; followed in *R.* v. *Chiswick U. D. C.* (1908), 72 J. P. 165). See also *R.* v. *Tynemouth Corporation*, [1911] 2 K. B. 361; 75 J. P. 420; in that case a plan for the erection of buildings and the laying out of new streets submitted for approval showed that the greater part of a new street was to be laid out on a field. The authority were advised that the field must, under certain covenants, be kept for ever as arable or pasture land, or as lawns, shrubberies or gardens, and for no other purpose whatsoever, and they disapproved the plan on the ground (*inter alia*) that it was not practicable to lay out the street as shown in the plan. It was held that they had jurisdiction to refuse to approve on the ground that in view of the restrictive covenants the plan could not in fact be carried out.

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Where a railway company acting under a special Act erected a station beyond the general line of buildings in a street in the metropolis, and the station was necessary for the railway and was within the limits of deviation, it was held that the provisions of the Metropolis Management Acts as to the building line did not apply (*City and S. L. Rail. Co.* v. *London C. C.*, [1891] 2 Q. B. 513; 56 J. P. 6). This decision has been followed in *London C. C.* v. *London School Board*, [1892] 2 Q. B. 606; 56 J. P. 791. See also *Surrey Commercial Dock Co.* v. *Bermondsey Borough Council*, [1904] 1 K. B. 474; 68 J. P. 155; *Stretford U. D. C.* v. *Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 1 L. G. R. 683; *Lewis and Solome* v. *Charing Cross, etc. Rail. Co.*, [1906] 1 Ch. 508; 70 J. P. 221; *Met. Rail. Co.* v. *London C. C.*, [1913] 2 K. B. 249; 77 J. P. 190.

Special Acts.

This Act is an Act for improving the sanitary condition of towns and populous districts within the meaning of the Waterworks Clauses Act, 1847, s. 93. Therefore, if the Act of 1847 is incorporated by the special Act of a water company, the company is liable for erecting a building in a street beyond the front main wall of the house, or building, on either side thereof in the same street (*Grand Junction Waterworks* v. *Hampton U. D. C.* (No. 2), (1898), 67 L. J. Q. B. 903; 79 L. T. 176; *cf. Uckfield R. D. C.* v. *Crowborough Water Co.*, and *London C. C.* v. *Wandsworth and Putney Gas Co.*, *ante*, p. 329).

(*e*) Want of notice is fatal, but if a summons is dismissed for want of notice, notice may be afterwards given, and a fresh summons taken out, and the defendant convicted thereon (*Jenkins* v. *Merthyr Tydfil U. D. C.* (1899), 80 L. T. 600).

Penalty for contravention of section.

For the procedure to be adopted when the justices at the hearing are equally divided, see the cases collected in the note under s. 251, at p. 556, *ante*.

It will be observed that the urban authority are not empowered to demolish a building erected contrary to this section, nor has a justice power to make an order to that effect, unless, perhaps, if the highway is obstructed: see *Bagshaw* v. *Buxton L. B.* (1875), 1 Ch. D. 220; 40 J. P. 197, and *Reynolds* v. *Presteign U. D. C.*, *ante*, p. 265.

The plaintiffs, owners of a house and area situate in and fronting a street, altered the front of the house by throwing out bay windows projecting beyond the street line of frontage, but not beyond the limits of the area. After the completion of the work the defendants, the local authority, threatened the plaintiffs with summary proceedings under the repealed s. 156. The plaintiffs then moved *ex parte* for an injunction to restrain the defendants from taking these proceedings, alleging—(1) that as the alteration had been made over their own property, the defendants in threatening proceedings were acting *ultra vires*; (2) that the defendants, having had notice of the plaintiffs' intention to make the alterations, were bound by acquiescence; and (3) that the justices had no jurisdiction, as the defendants had not made their complaint within six months. The motion was refused on the ground that the court could not restrain criminal proceedings, and that the grounds suggested for interference were matters of defence to be used before the magistrates (*Kerr* v. *Preston Corporation* (1876), 6 Ch. D. 463).

The legislature having provided by the text a particular mode of proceeding in case of offence, the court will be very slow to exercise its jurisdiction (if it has any) to restrain the local authority from pursuing the statutory remedy, or to make a declaration inconsistent with the right to pursue such remedy, unless it is proved that any trespass is threatened or intended by the local authority (*Grand Junction Waterworks* v. *Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566; followed in

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Williams v. *Weston-super-Mare U. D. C.* (No. 2) (1910), 74 J. P. 370; 103 L. T. 9; and *Merrick* v. *Liverpool Corporation*, [1910] 2 Ch. 449; 74 J. P. 445; and *cf. Dyson* v. *Att.-Gen.*, [1912] 1 Ch. 158).

The words of this paragraph are similar to those of the repealed s. 156. It was held, with reference to that section, that an offence to which the penalty was applicable continued as long as the addition to the house was maintained after written notice from the urban authority, notwithstanding that the addition was completed before the notice was given (*Rumball* v. *Schmidt* (1882), 8 Q. B. D. 603; 46 J. P. 567). It has also been held that under s. 3, *supra*, a penalty may be imposed time after time if the offence is continued (see *Att.-Gen.* v. *Wimbledon House Estate Co.*, *infra*).

The penalty will be recoverable summarily under the P. H. A., 1875, s. 251, *ante*, p. 551.

The notice will be given and authenticated as provided by ss. 266 and 267 of the last-mentioned Act.

A person purchased a house from a builder who had in building it committed an offence under s. 3. It was held that the purchaser did not commit an offence against the section by maintaining the house after notice from the urban authority in the same state as it was in at the time he bought it (*Blackpool Corporation* v. *Johnson*, [1902] 1 K. B. 646).

The offence prohibited by the section is one compound offence, consisting of building without consent, and continuing after notice, for which a penalty is imposed to be exacted by the urban authority. Therefore, a private individual has no cause of action against a neighbour who erects a building in advance of the building line (*Mullis* v. *Hubbard*, *ante*, p. 790). Nor will an indictment lie (*ibid.*). A summary remedy is not, however, the only remedy available. Defendants commenced to erect a building contrary to the provisions of s. 3, and, after due notice, were summoned by the urban authority and fined. The defendants paid the fine and continued, and threatened to complete, the erection of the building. The Attorney-General, at the relation of the urban authority, moved for a mandatory injunction to compel the pulling down of so much of the building as infringed the statute. The defendants objected to the action on the double ground that the only remedy was the one given by statute, that if there was a double remedy by proceedings before the justices and an injunction, only one could be adopted, and further, that there had been laches. It was held that it was lawful for the Attorney-General to take action, although there was also a statutory remedy; that as the offence was a continuing one, the Attorney-General could sue for an injunction, although proceedings had been taken before the justices; that, in fact, there had been no laches, and, there having been a breach of the statute, a mandatory injunction must be granted (*Att.-Gen.* v. *Wimbledon House Estate Co.*, [1904] 2 Ch. 34; 68 J. P. 341).

THE PUBLIC BODIES CORRUPT PRACTICES ACT, 1889.

(52 & 53 VICT. c. 69 (*z*).)

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies.

[30th August 1889.]

Whereas it is expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies:

(*z*) This Act with the Prevention of Corruption Act, 1906, and the Prevention of Corruption Act, 1916, are to be cited together as the Prevention of Corruption Acts, 1889 to 1916.

1.—(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive (*a*), for himself, or for any other person, any gift, loan, fee, reward, or advantage (*b*) whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined (*b*), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor (*c*). **Section 1.** Corruption in office a misdemeanor.

(*a*) This sub-section applies to the person bribed or corrupted; the next deals with the person bribing. It was held not necessary on an indictment under this sub-section to prove that the accused was himself a member, officer, or servant of a public body as defined by the Act, the alleged offence being an attempt to obtain a sum of money for abstaining, or inducing other persons to abstain, from giving evidence on an application to the London County Council for a music and dancing licence (*R.* v. *Edwards* (1895), 59 J. P. 88).

(*b*) For the definition of advantage, public body, etc., see s. 7, *post*, p. 797.

(*c*) This misdemeanour may be tried on indictment at quarter sessions (s. 6). The penalty is prescribed by s. 2.

Reference should also be made to the Prevention of Corruption Act, 1906, *post*, which provides for the punishment of corrupt transactions with "agents," a term which includes persons serving under any corporation or any borough, county, or district council or any board of guardians.

It should be mentioned that it is a misdemeanour at common law for a public officer, whether judicial or ministerial, to accept a bribe as an inducement to him to show favour or forbear to show disfavour to any person towards whom the impartial discharge of the officer's duty demands that he should show no favour or that he should show disfavour. It is also a misdemeanour at common law for such an officer to conspire with others that he shall receive such a bribe (*R.* v. *Whitaker*, [1914] 3 K. B. 1283; 79 J. P. 28.

(2) Every person (*a*) who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage (*b*) whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined (*b*), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor (*c*).

(*a*) The word "person" includes a body of persons, such as a firm or joint stock company. See s. 7.

(*b*) See the definition of advantage, public body, etc., in s. 7, *post*, p. 797.

(*c*) See note (*c*) to the preceding sub-section.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted (*a*)— Penalty for offences.

(a) be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine (*b*); and

(b) in addition, be liable to be ordered to pay to such body (*c*), and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and

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(c) be liable to be adjudged incapable of being elected or appointed to any public office (*d*) for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and

(d) in the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office (*d*), and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting (*e*); and

(e) if such person is an officer or servant in the employ of any public body upon such conviction (*f*) he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

(*a*) The court will be either the court of quarter sessions (see s. 6), or the assizes, or Central Criminal Court. The offence is not punishable summarily.

(*b*) A person convicted on indictment for a misdemeanor under this Act shall, where the matter or transaction in relation to which the offence was committed was a contract or proposal for a contract with His Majesty or any government department or any public body, or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding three years: provided that nothing in the section in recital shall prevent the infliction in addition to penal servitude of such punishment as under the above section may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the section or under the Act of 1906 already mentioned in the note to the preamble. See the Prevention of Corruption Act, 1916, 6 & 7 Geo. 5, c. 64, s. 1, *post*.

(*c*) That is, the public body, as defined by s. 7, of which he is a member, an officer, or a servant.

(*d*) As to what is a public office, see s. 7. Reference might be made to the case of the *West Ham Guardians and Officials*, where orders were made under clauses (c) and (d) of this section (71 J. P. N. 245).

(*e*) By the Corrupt and Illegal Practices Prevention Act, 1883, s. 37, every person who, in consequence of conviction, or of the report of an election court under that Act, or the Municipal Corporations Act, 1882, Part IV., or under any other Act for the time being in force, relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. By s. 39, the registration officer (*i.e.*, the clerk of the county council or town clerk) in every county and borough is required annually to make out a list of persons disqualified to vote by reason of corrupt practices. By the Representation of the People Act, 1918, 8 Geo. 5, c. 64, Sched. I., r. 8, he is required to publish such list. By the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 24, the town clerk of every municipal borough is required annually, in July, to make out a list of persons disqualified by corrupt practices to vote at a municipal election in the borough, and to send a copy to the overseers of every parish in the borough, and the overseers must omit the names of the persons named therein from the burgess list. It seems to follow from the text that the lists prepared by clerks of the peace and town clerks under these enactments must include the names of all persons convicted under this Act.

(*f*) This consequence will apparently follow, whether the conviction is for a first or a subsequent conviction.

3.—(1) *Where an offence under this Act is also punishable under any other enactment, or at common law, such offence may be prosecuted and punished either under this Act, or under the other enactment, or at common law, but so that no person shall be punished twice for the same offence.* Section 3. Savings.

Repealed by the S. L. R. A., 1908. See the Interpretation Act, 1889, s. 33.

It appears from Com. Dig. "Officer (N.)," that all officers, whether such by the common law, or made pursuant to statute, are punishable for corruption or oppressive proceedings, according to the nature and heinousness of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their offices, etc. It is also stated that bribery of an officer is punishable at common law by fine and imprisonment. It is unlikely, however, that any offence within the terms of this Act will be dealt with otherwise than as herein provided.

See also the Prevention of Corruption Act, 1906, referred to in the note to s. 1 (1), *ante*, p. 795.

(2) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

In other words, the Act applies to the corrupt acts of members, officers, or servants who are such de facto, though the validity of their election or appointment may be open to question.

4.—(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General. Restriction on prosecution.

It is entirely in the discretion of the Attorney-General to grant or refuse his consent (see *Ex parte Hurter* (1883), 47 J. P. 724; 15 Cox, C. C. 166).

(2) In this section the expression "Attorney-General" means the Attorney or Solicitor General for England, and as respects Scotland means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor General for Ireland.

5. *The expenses of the prosecution of an offence against this Act shall be defrayed in like manner as in the case of a felony.* Expenses of prosecution.

See now the Costs in Criminal Cases Act, 1908, which repealed this section.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act. Jurisdiction of quarter sessions.

It seems doubtful whether any such provision was necessary to give jurisdiction to quarter sessions. The general rule with regard to indictable offences newly created by statute, is that quarter sessions have jurisdiction unless it is otherwise expressly provided (Archbold's Quarter Sessions, 6th ed., p. 462; Com. Dig. Justices of Peace, B. (3); and see *R.* v. *Cock* (1815), 4 M. & S. 71). It should be observed, however, that quarter sessions have no jurisdiction with regard to offences under the Act of 1906. See s. 2 (5) of that Act, *post*.

7. In this Act— Interpretation.

The expression "public body" means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom (*a*):

Section 7.

The expression " public office " means any office or employment of a person as a member, officer, or servant of such public body:

The expression " person " includes a body of persons, corporate or unincorporate:

The expression " advantage " includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

(*a*) This definition includes all sanitary authorities, urban and rural. The Act of 1916, s. 4 (2), *post*, provides that the expression " public body " shall include, in addition to the bodies mentioned in the above section, local and public authorities of all descriptions.

8. [*Scotland.*]

9. [*Ireland.*]

Short title.

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

(52 & 53 VICT. c. 72.)

An Act to provide for the Notification of Infectious Disease to Local Authorities. [30th August 1889.]

Short title.

1. This Act may be cited as the Infectious Disease (Notification) Act, 1889.

Extent of Act.

2. This Act shall extend—

. . . . . .

(b) To any urban, rural, or port sanitary district *after the adoption thereof.*

This section has been repealed in so far as it relates to London, and re-enacted by the P. H. (London) A., 1891.

The words in italics in clause (b) were repealed by the Infectious Disease (Notification) Extension Act, 1899, *post*, p. 1008, by which this Act was extended to every urban, rural, and port sanitary district in England and Wales, whether therein previously adopted or not.

Notification of infectious disease.

3.—(1) Where an inmate of any building (*a*) used for human habitation within a district to which this Act extends is suffering from an infectious disease to which this Act applies (*b*), then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say:

(a) The head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest

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relatives of the patient present in the building or being in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building (*c*) shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district (*d*) :

(b) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate (*e*) stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering.

(2) Every person required by this section to give a notice or certificate who fails to give the same, shall be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding forty shillings ;

Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given (*f*).

Forms for use under this Act will be found in the Encyclopædia of Forms and Precedents, Vol. X., at p. 393.

Further provision as to the notification of infectious diseases has been made by the P. H. A., 1907, Part IV., *post*, p. 1053. Section 54 imposes upon dairymen the duty of notifying infectious diseases existing among their servants; and s. 64 imposes upon the owners or drivers of public vehicles the duty of notifying that they have conveyed infected persons. These sections will, however, only be operative if declared by the L. G. B. or the Ministry of Health to be in force in the district, and will only apply subject to such conditions or adaptations as may be specified in the Order of the Board or Ministry.

(*a*) The word "building" includes ships, vessels, boats, tents, vans, sheds, or similar structures used for human habitation (see s. 13, *post*, p. 804).

(*b*) The diseases to which the Act applies are enumerated in s. 6; but it may be extended to certain other diseases under s. 7.

(*c*) The persons upon whom the obligation is laid are—(1) the head of the family ; (2) the nearest relative in the building or in attendance on the patient; (3) the person in charge of the patient; and (4) the occupier of the building. (As to the definition of occupier, see s. 16.) A notice by one of these persons avails for all enumerated later in the foregoing list, but apparently not for any enumerated earlier (see sub-s. (2)). Thus, a notice given by the head of the family renders it unnecessary for the relatives to give a notice. But a notice given by the relatives does not free the head of the family from the consequences of himself failing to give the notice. As to the manner in which notices may be sent, see s. 8.

(*d*) There is no provision here, as in s. 4 (3), for the case where there are two or more medical officers.

The L. G. B. have stated that they consider it to be both unnecessary and undesirable that a medical officer of health should, in general, make a personal examination of cases of infectious disease notified to him under the provisions of the Act in order to test the accuracy of the certificates. They also point out that if in any special case, as where the disease which has been notified is one which would threathen unusual danger to the community, or where the attendant circumstances might call for exceptional action, the medical officer of health, in order to be better able to advise his council, deems it desirable that he should make a personal examination of the patient, it must be remembered that this can only be done with the consent of the patient, and that in

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any circumstances the medical practitioner in attendance on the case should always be communicated with, and his co-operation secured if possible.

(*e*) As to the form of the certificate, see s. 4; as to the manner in which the certificate may be sent, see s. 8.

In reply to an inquiry the L. G. B. stated that they were advised that if more than one medical practitioner is attending on or called in to visit the patient, each practitioner is bound to send a certificate, and is entitled to the prescribed fee.

With regard to the question of requiring medical practitioners to state the ages of the patients whom they notify to the medical officer of health as suffering from infectious disease, the L. G. B. have stated that the certificates of notification must be strictly in the form prescribed by the Order of September 12th, 1889, but that the Board see no objection to the addition to the form of a footnote requesting certifying practitioners to give further particulars, such as the age of the sufferer or the name of the school which is attended by a child. The Board, however, added that it must be made clear on the face of the form that the supply of this information is optional.

Inquiry was made of the Board as to whether a medical practitioner is entitled to be paid a fee by a district council in respect of his notification of a case as one of diphtheria which, as the result of a bacteriological examination, is stated to be not of that disease. In reply, the Board stated that it appeared to them that the certificate should be paid for unless, in view of the results of the bacteriological examination, the notification is withdrawn by the medical practitioner who gave it. The Board at the same time, without expressing an opinion upon the nature of any particular case, stated generally that they did not consider that the careful clinical observations of a medical practitioner in charge of a case should be set aside without his consent solely on the ground of a negative result yielded by a single bacteriological examination.

Where a medical officer does not become aware that a person has been suffering from infectious disease until after death has taken place, he is not required to notify such a case under this Act, and cannot be paid a fee for such notification.

(*f*) See note (*c*), *supra*.

As to forms and case of several medical practitioners.

4.—(1) The Local Government Board may from time to time prescribe forms for the purpose of certificates under this Act, and any forms so prescribed shall be used in all cases to which they apply (*a*).

(2) The local authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this Act a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution (*b*).

(3) Where in any district of a local authority there are two or more medical officers of health of such authority a certificate under this Act shall be given to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the local authority may from time to time direct.

(*a*) A form has been prescribed: see Order of the L. G. B., dated September 12th 1889, in App. II., *post*, Vol. II. See also notes to previous section.

(*b*) Questions have arisen as to what constitutes a public body or institution. The expression, no doubt, includes a public hospital or infirmary, and a workhouse, but not it is submitted, a private hospital to which patients are admitted for payment, nor a medical club or provident dispensary.

An urban council sought the opinion of the L. G. B. as to their power to require medical practitioners to render to them statements of the fees payable in respect of notifications of cases of infectious disease under the Act. The Board, in reply, pointed out that the Act requires the council to pay "for each certificate duly sent," and stated that they are not aware of any legal obligation resting upon practitioners to send to the council a statement of fees apart from the certificates themselves. The Board added that they thought that where such a statement is required by the council, no

trouble is saved to them or to their officers, since it would have to be checked by comparison with the certificates actually received.

Note to Section 4.

The Local Government (Emergency Provisions) Act, 1916, 6 & 7 Geo. 5, c. 12, s. 5, reduced the fee payable to the medical practitioner to one shilling. It also provided for the notification of disease occurring in any building, tent, van, or similar structure in the occupation of H.M. Forces, etc., and for the payment of one shilling for each such notification. But s. 24 provides that the Act shall be in force only during the continuance of the war and for such period or periods not exceeding one year as the L. G. B. (or Ministry of Health) may fix.

5. [*Adoption of Act in urban or rural district.*]

Repealed by the Infectious Disease (Notification) Extension Act, 1899, *post*, p. 1008.

6. In this Act the expression "infectious disease to which this Act applies" means any of the following diseases, namely, small pox, cholera (*a*), diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which this Act has been applied by the local authority of the district in manner provided by this Act (*b*).

Definition of "infectious disease."

(*a*) With reference to this disease the L. G. B. have stated that they are not empowered to authoritatively interpret the word. Where a certificate notifying a case is received by the medical officer of health it is to be assumed that the case is one for investigation. The addition of the qualification "English" does not remove the case from the list of diseases properly notifiable and would not in itself be a sufficient ground for withholding the usual fee. In this connection regard should be had to the age of the patient, to the severity and character of the symptoms, and the tendency to rapidly fatal result.

Regulations have been made under the P. H. A., 1875, s. 130, and the P. H. A., 1896, with reference to the notification of other diseases. The regulations in force will be found in Appendix II.

(*b*) The manner provided by this Act is stated in the next section.

7.—(1) The local authority of any district to which this Act extends may, from time to time, by a resolution passed at a meeting of such authority where the like special notice of the meeting and of the intention to propose the resolution has been given as is required in the case of a meeting held for adopting this Act (*a*), order that this Act shall apply in their district to any infectious disease other than a disease specifically mentioned in this Act (*b*).

Power to local authority to extend definition of "infectious disease."

Forms for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. X., at pp. 394—399. See also a Memorandum of the L. G. B., dated Dec. 12th, 1911, as to the procedure to be followed.

(*a*) The special notice formerly required by s. 5 in the case of a meeting held for adopting this Act was a notice given to every member of the local authority fourteen clear days at least before the meeting. Such notice was to be deemed to have been duly given if it was either (a) given in the mode in which notices to attend meetings of the local authority are usually given; or (b) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England. But see sub-s. (6), *infra*, as to cases of emergency.

(*b*) This provision enables a local authority to include in the definition of infectious disease a disease not mentioned in s. 6, such as measles. This has been done in some cases of epidemic. The order must be confirmed by the L. G. B. or Ministry of Health.

Note to Section 7.

See sub-s. (3), *infra*. In some districts cerebro-spinal fever, acute poliomyelitis, and ophthalmia neonatorum were made notifiable under this section.

The L. G. B. have refused to extend the provisions of the Act to cases of cancer. They state that until more is known than at present of the etiology of that disease nothing can be attempted in the way of measures of prevention with any prospect of success sufficient to counterbalance the grave inconveniences which the compulsory notification of the disease would entail.

(2) Any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the local authority which made the same.

(3) An order under this section and the revocation and variation of any such order shall not be of any validity until approved by the Local Government Board.

To this general statement there is an important exception, viz., in cases of emergency. See sub-s. (6), *infra*.

(4) When it is so approved, the local authority shall give public notice thereof by advertisement in a local newspaper and by handbills, and otherwise in such manner as the local authority think sufficient for giving information to all persons interested. They shall also send a copy thereof to each registered medical practitioner whom, after due inquiry, they ascertain to be residing or practising in their district.

The authority have a duty cast upon them to ascertain the names of all medical practitioners in their district, whether practising or only residing there. The names of those practising will be readily ascertained from the notices sent in by them under the Act; but this hardly applies to medical men residing but not practising in the district.

(5) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the local authority may fix, and upon such order coming into operation, and during the continuance thereof, an infectious disease mentioned in such order shall, within the district of the authority be an infectious disease to which this Act applies.

And notices of this disease must be given under this Act as in the case of one of the diseases specified in s. 6, *ante*, p. 801.

(6) In the case of emergency three clear days' notice under this section (*a*) shall be sufficient, and the resolution shall declare the cause of such emergency and shall be for a temporary order, and a copy thereof shall be forthwith sent to the Local Government Board and advertised (*b*), and the order shall come into operation at the expiration of one week from the date of such advertisement, but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed, or any earlier date fixed by the Local Government Board.

(*a*) Instead of a fourteen clear days' notice such as is required under s. 7 (1), three clear days' notice of the meeting and of the intention to propose the resolution will be sufficient, but the resolution must declare the cause of the emergency, such as the outbreak or extent of an epidemic of measles, etc.

(*b*) The approval of the L. G. B. (now the Ministry of Health) is not required except as afterwards provided in the sub-section. The advertisement must be forthwith, not after approval, as in the ordinary case under sub-s. (4). **Note to Section 7.**

(7) The approval of the Local Government Board shall be conclusive evidence that the case was one of emergency.

This approval of the L. G. B. (now the Ministry of Health) is not absolutely necessary except for the purpose of keeping the order in force after a month. But if such approval is given, the order will remain in force, and the fact of emergency cannot be disputed in any way.

Notices and certificates.

8.—(1) A notice or certificate for the purposes of this Act shall be in writing or print, or partly in writing and partly in print; and for the purposes of this Act the expression "print" includes any mechanical mode of reproducing words.

See also s. 20 of the Interpretation Act, 1889, and note that although that Act was passed on the same day as this Act, it did not come into operation until January 1st, 1890. See s. 42. See also notes to ss. 3, 4.

(2) A notice or certificate to be sent to a medical officer of health in pursuance of this Act may be sent by being delivered to the officer or being left at his office or residence, or may be sent by post addressed to him at his office or at his residence.

This refers to the notices given by private persons and the certificate sent by medical practitioners under s. 3. If the notice is sent by post the letter need not be registered, but it may be prudent to register the letter, in order that proof of the posting may be forthcoming if required (see the Interpretation Act, 1889, s. 26).

Expenses.

9. Any expenses incurred by a local authority in the execution of this Act shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health and in the case of a rural authority shall be general expenses.

In the case of an urban authority, the expenses will be payable out of the general district fund. In the case of a rural authority, the expenses will be paid out of the common fund of the whole district, as to which see s. 229 of the P. H. A., 1875, *ante*, p. 510.

10. [*Repayment of expenses, etc.*]

This section applied only to London, and was repealed and re-enacted by the P. H. (London) A., 1891.

Non-disqualification of medical officer by receipt of fees.

11. A payment made to any medical practitioner in pursuance of this Act shall not disqualify that practitioner for serving as member of the council of any county or borough, or as member of a sanitary authority, or as guardian of a union, or in any municipal or parochial office (*a*).

Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which he would be entitled if he were not such medical officer.

(*a*) But for this provision a medical practitioner, who was a member of a sanitary authority, might have been brought within the provisions which forbid a member of such authority to accept or hold any office or place of profit under it, or to be concerned

Note to Section 11. in any contract with it. See, for example, the Municipal Corporations Act, 1882, s. 12, and the L. G. A., 1894, s. 46.

12. [*Application of Act to Woolwich.*]

Repealed and re-enacted by the P. H. (London) A., 1891.

Application of Act to vessels, tents, etc.

13.—(1) The provisions of this Act shall apply to every ship, vessel, boat, tent, van, shed, or similar structure used for human habitation, in like manner as nearly as may be as if it were a building (*a*).

(2) A ship, vessel, or boat, lying in any river, harbour, or other water not within the district of any local authority within the meaning of this Act shall be deemed for the purposes of this Act to be within the district of such local authority as may be fixed by the Local Government Board, and where no local authority has been fixed, then of the local authority of the district which nearest adjoins the place where such ship, vessel, or boat is lying (*b*).

(*a*) See, however, s. 15, *infra*, which exempts Crown ships and buildings; and see sub-s. (3), *infra*.

(*b*) The words of this sub-section are very similar to those of the P. H. A., 1875, s. 110, *ante*, p. 210. It seems doubtful whether they apply to a ship on the sea.

(3) This section shall not apply to any ship, vessel, or boat belonging to any foreign government.

Saving for local Act.

14. Where this Act is put in force in any district in which there is a local Act for the like purpose as this Act, the enactments of such local Act, so far as they relate to that purpose, shall cease to be in operation.

Notwithstanding this section, it was on the extension of this Act by the Infectious Disease (Notification) Extension Act, 1899, *post*, p. 1008, specially provided by s. 2 of that Act that nothing in it should be construed to repeal, alter, or affect the provisions of any local Act which immediately before its passing was in force within the county borough of Huddersfield. But subject to that saving all local Acts for the like purpose may now be regarded as superseded.

Exemption of Crown buildings.

15. Nothing in this Act shall extend to any building, ship, vessel, boat, tent, van, shed, or similar structure belonging to her Majesty the Queen, or to any inmate thereof.

As to the application of the Act to ships, tents, etc., see s. 13, *supra*.

Definitions.

16. In this Act—

The expression "local authority" means each of the following authorities; that is to say,—

. . . . . .

(c) An urban or rural sanitary authority in England within the meaning of the Public Health Acts; and

(d) The port sanitary authority of any port sanitary district in England (*a*).

. . . . . .

The expression "urban or rural district" means the district for which any such urban or rural sanitary authority is elected:

The expression "port sanitary district" means the port sanitary district of London (*b*) and any port or part of a port for which a port sanitary authority has been constituted under the Public Health Acts, and any such port sanitary district shall form no part, for the purposes of this Act, of any urban or rural district:

The expression "occupier" includes a person having the charge, management, or control of a building (*c*), or of the part of a building in which the patient is, and in the case of a house the whole of which is let out (*d*) in separate tenements, or in the case of a lodging-house the whole of which is let (*d*) to lodgers, the person receiving the rent payable by the tenants or lodgers either as [*sic*] his own account or as the agent of another person (*e*), and in the case of a ship, vessel, or boat, the master or other person in charge thereof.

The portions of this section which related to London have been repealed (with the exception of the reference to the port of London) by the P. H. (London) A., 1891. It is set out above in so far as it is still in force.

(*a*) As to the constitution of port sanitary districts, see the P. H. A., 1875, s. 287, *ante*, p. 622.

(*b*) See now, as to the port sanitary district of London, the P. H. (London) A., 1891, s. 111, which re-enacts s. 291 of the P. H. A., 1875, now repealed.

(*c*) As to what is included in the term "building," see s. 13, *supra*.

(*d*) *Semble*, the expression "the whole of which *is* let" means "the whole of which is ordinarily let" (whether any part may happen at the moment to be vacant or not). In such cases the owner or his agent is deemed to be the occupier of the whole; where, however, an owner is only in the habit of letting part, then the tenant or lodger occupying such part is the occupier thereof.

(*e*) As to rent collectors, receivers, etc., see cases on p. 14, *ante*.

17. [*Application of Act to Scotland.*]

18. [*Application of Act to Ireland.*]

THE PUBLIC HEALTH (RATING OF ORCHARDS) ACT, 1890.

(53 & 54 Vict. c. 17.)

An Act to amend the Laws relating to the Rating of Orchards for Sanitary Purposes. [25th July 1890.]

Whereas it is enacted by section two hundred and eleven (1) (b) *and section two hundred and thirty of the Public Health Act*, 1875, *that "the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds," shall be assessed to the general district rate in an urban district or to a separate rate levied in respect of special expenses within the meaning of the said Act in a rural district, in the proportion of one-fourth part only of the net annual value or rateable value of such land:*

And whereas doubts have arisen whether orchards are or are not included among the lands to which the aforesaid exemptions apply:

Section 1.

And whereas it is expedient to remove such doubts, and to render the practice of assessment uniform, and to relieve orchards from all liability to be assessed for sanitary purposes at a higher rate than other cultivated lands:

Amendment of 38 & 39 Vict. c. 55, s. 211 (1) (b) and s. 230.

1. *From and after the first day of October one thousand eight hundred and ninety* section two hundred and eleven, sub-section one (*a*), and section two hundred and thirty (*a*) of the Public Health Act, 1875, shall be read and construed as if the word "orchards" was inserted in each of those sections after the word "woodlands." *Provided that nothing in this Act shall apply to any rate made under either of the said sections on or before the first day of October one thousand eight hundred and ninety.*

Italicised words repealed by S. L. R. A., 1908.

(*a*) The P. H. A., 1875, s. 211, *ante*, p. 478, is the section which deals with the assessment and levying of general district rates by urban authorities. It provides that such rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property ascertained by the valuation list for the time being in force: but this general provision is subject to certain exceptions, one of which (sub-s. (1) (b)) is as follows: The owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands, market gardens or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof.

The P. H. A., 1875, s. 230, *ante*, p. 514, provides for the mode in which a rural authority are to raise contributions from the several parishes and contributory places within their district. Precepts are issued to the overseers requiring them to pay so much for general expenses chargeable equally on the whole district, and so much for special expenses chargeable only upon one or more contributory places. The section goes on to provide as follows: The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception: (namely,) That the owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands, market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property.

The present Act has simply the effect of inserting the word "orchards" after "woodlands" in these two sections.

Short title.

2. This Act may be cited as the Public Health (Rating of Orchards) Act, 1890.

THE INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

(53 & 54 VICT. c. 34.)

An Act to prevent the spread of Infectious Disease. [4th August 1890.]

1. This Act may be cited as the Infectious Disease (Prevention) Act, 1890. Short title.

2. Expressions used in this Act shall, unless the context otherwise requires, have the same meaning as the like expressions used in the Infectious Disease (Notification) Act, 1889 (*a*); and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act (*b*), and may be applied to any other infectious disease in the same manner as that Act may be applied to such disease (*c*). Definitions.

In this Act—

"Dairy" shall include any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale (*d*):

"Dairyman" shall include any cowkeeper, purveyor of milk, or occupier of a dairy:

"Medical officer of health" shall include any person duly authorised to act temporarily as medical officer of health (*d*):

. . . . . .

(*a*) See that Act, *ante*, p. 798. Section 13 extends the definition of "a building" to shops, vessels, boats, tents, vans, etc., used for human habitation. Section 16 is the interpretation clause.

(*b*) These are small-pox, cholera, diphtheria, membranous croup, erysipelas, the diseases known as scarlatina or scarlet fever, and the fevers known by any of the following names: Typhus, typhoid, enteric, relapsing, continued, or puerperal.

(*c*) As to the application of that Act to other diseases, see s. 7, *ante*, p. 801.

(*d*) See now the definitions in s. 19 of the Milk and Dairies (Consolidation) Act, 1915 (5 & 6 Geo. 5, c. 66, *post*. See note on p. 734). The rest of this section applied to Woolwich, and is now repealed by the P. H. (London) A., 1891.

3. The provisions of this Act shall extend (*a*)— Extent of Act.

. . . . . .

(b) To any urban or rural sanitary district after the adoption thereof; and the local authority of any urban or rural sanitary district may adopt all or any of the sections of this Act (*b*) by a resolution passed at a meeting of such authority. Fourteen clear days at least (*c*) before such meeting special notice of the meeting, and of the intention to propose such resolution (*d*), shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either—

(a) given in the mode in which notices to attend meetings of the local authority are usually given (*e*); or

(b) where there is no such mode (*f*), then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post

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in a prepaid letter addressed to the member at his usual or last known place of abode in England.

Every such resolution shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix; and upon its coming into operation such of the sections of this Act as are mentioned in such resolution shall extend to the district.

A copy of the resolution shall be sent to the Local Government Board when it is published.

A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement (*g*).

Extensive additional powers in connection with the prevention of infectious diseases may, on the application of any local authority, be given to it by the Ministry of Health under the powers conferred by the P. H. A., 1907, Part IV., *post*, p. 1053.

(*a*) The provisions by which the Act was extended to London districts were repealed by the P. H. (London) A., 1891.

By the Public Health (Ports) Act, 1896, s. 1, *post*, p. 1006, the L. G. B., now the Ministry of Health, may by order assign to any port sanitary authority any powers, rights, duties, capacities, and obligations under this Act with the necessary modifications. See Order of August, 1912, referred to in the notes to that Act, p. 1006, *post*.

(*b*) The local authority need not adopt the whole of the Act. They can adopt one or more sections, if they think fit. In this respect the present enactment differs from the corresponding provisions of the P. H. A., 1890, *post*, p. 819.

(*c*) This means fourteen days exclusive of the day of giving notice and of the date of the meeting. Thus, if a meeting were to be held on the 31st, the last day upon which notice for that meeting could be given would be the 16th: see *Zouch* v. *Empsey* (1821), 4 B. & A. 522; *R.* v. *Salop JJ.* (1838), 8 A. & E. 173; 7 L. J. M. C. 56.

(*d*) As a resolution cannot be proposed except by a member, it might be inferred that the notice must be given by the member intending to propose it; but it is to be gathered from the rest of the section that the member is to give notice of his intention to the clerk, and the clerk is to send out the notice to the other members.

(*e*) Notice to attend meetings of the local authority is given in various ways. If the authority is a municipal corporation, the notice is given in the manner provided by the Municipal Corporations Act, 1882, Sched. II., r. 1, *i.e.*, by summons to attend the meeting, specifying the business to be transacted, and left or delivered by post in a registered letter at the usual place of abode of every member of the council. In the case of an urban district council, other than a town council, the summoning and notice of a meeting depends upon the regulations of the council made under the P. H. A., 1875, Sched. I., r. 1, *ante*, p. 669, and s. 59 of the L. G. A., 1894, *post*, p. 974.

(*f*) It is difficult to suggest any case to which these words can apply.

(*g*) This paragraph contains a most useful provision. The words "copy of the advertisement" probably mean a copy of the newspaper containing the advertisement. It seems that the objection to the resolution mentioned in the paragraph may be raised within the three months following the first advertisement.

Inspection of dairies in certain cases:

4. In case the medical officer of health (*a*) is in possession of evidence that any person in the district is suffering from infectious disease (*b*) attributable to milk supplied within the district from any dairy (*c*)

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power to prohibit supply of milk.

situate within or without the district, or that the consumption of milk from such dairy is likely to cause infectious disease to any person residing in the district, such medical officer shall, if authorised in that behalf by an order of a justice having jurisdiction in the place where such dairy is situate (*d*), have power to inspect such dairy, and if accompanied by a veterinary inspector (*e*) or some other properly qualified veterinary surgeon (*f*) to inspect the animals therein, and if on such inspection the medical officer of health shall be of opinion that infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the local authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the local authority may thereupon give notice to the dairyman (*g*) to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until such order has been withdrawn by the local authority, and if, in the opinion of the local authority, he fails to show such cause, then the local authority may make such order as aforesaid (*h*) ; and the local authority shall forthwith give notice of the facts to the sanitary authority and county council (if any) of the district or county in which such dairy is situate (*i*), and also to the Local Government Board. An order made by a local authority in pursuance of this section shall be forthwith withdrawn on the local authority or the medical officer of health on its behalf being satisfied that the milk supply has been changed, or that the cause of the infection has been removed (*k*). Any person refusing to permit the medical officer of health on the production of such order as aforesaid to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or after any such order not to supply milk as aforesaid has been given, supplying any milk within the district in contravention of such order, or selling it for consumption therein, shall be deemed guilty of an offence against this Act (*l*). Provided always, that proceedings in respect of such offence shall be taken before the justices of the peace having jurisdiction in the place where the said dairy is situate (*m*). Provided also, that no dairyman shall be liable to an action for breach of contract if the breach be due to an order from the local authority under this Act (*n*).

This section is one of the enactments saved by the Milk and Dairies (Consolidation) Act, 1915, 5 & 6 Geo. 5, c. 66, *post*. But that Act gives further powers to local authorities in regard to the matters dealt with in this section.

The power of an authority over dairymen will be increased if the Ministry of Health shall declare s. 53 of the P. H. A., 1907, to be in force in their district. That section, subject to any conditions or adaptations which may be specified in the Order, will enable the authority to require dairymen to furnish lists of the sources of supply of milk. See the section, *post*, p. 1053, and see also s. 54 as to the notification by dairymen of infectious diseases existing among their servants, a section which will also not be operative unless applied by an Order of the L. G. B. (now the M. of H.).

(*a*) This expression includes any person duly authorised to act temporarily as medical officer of health (see s. 2, *ante*, p. 807).

(*b*) As to the diseases included under this term, see notes (*b*) and (*c*) to s. 2.

(*c*) As to the definition of dairy, see s. 2.

(*d*) The dairy may be in another county, and the order must in that case be made by a justice of that county.

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(*e*) The Diseases of Animals Acts, 1894, s. 59, provides that the expression "inspector of the Board of Agriculture" or "inspector of a local authority" means a person appointed to be an inspector for purposes of the Act, by the Privy Council, or the Board of Agriculture, or by a local authority, as the case may be; and "inspector" used alone, means such a person, by whichever authority appointed; "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture. This enactment seems to explain the term used in the text. As to the remuneration of the veterinary inspector or surgeon, see s. 20, *post*, p. 818. It may be mentioned that the local authorities for the purposes of the Diseases of Animals Act, 1894, are now, by s. 3 of that Act (i) for each borough not being a borough to which the L. G. A., 1888, s. 39, applies, the borough council; (ii) for the residue of each administrative county, the county council. But in the city of London, the corporation are the local authority.

(*f*) This means a person whose name is on the register of members of the Royal College of Veterinary Surgeons (44 & 45 Vict. c. 52): see *Veterinary College* v. *Robinson*, [1892] 1 Q. B. 557; 56 J. P. 313; *Veterinary College* v. *Groves* (1893), 57 J. P. 505.

(*g*) For the definition of a "dairyman," see s. 2, *ante*, p. 807.

(*h*) The order will forbid the dairyman to supply milk from the dairy within the district of the local authority until the order is withdrawn.

(*i*) As already pointed out, the dairy may be in another sanitary district and in another county. If it is in another district, notice must be given to the sanitary authority of that district, and, in any case, notice must be given to the county council of the county in which the dairy is situate.

(*k*) The change of the milk supply can only occur in the case of a seller of milk who buys the milk he sells. When there is a change in the milk supply or when the cause of the infection has been removed, the section imposes a duty on the local authority to withdraw the order forthwith.

(*l*) As to the penalties for these offences and their recovery, see ss. 16, 18, *post*, pp. 817, 818.

(*m*) See note (*d*), *supra*.

(*n*) The meaning of this proviso appears to be that if a dairyman is under a contract to supply milk within the district and he is prevented from fulfilling his contract by an order under this section, he is not to be liable to pay damages for breach of contract.

Cleansing and disinfecting of premises, etc.

5. . . . (*a*) Section one hundred and twenty of the Public Health Act, 1875, so far as it applies to any urban or rural sanitary district in which this section is adopted (*b*), shall be repealed, and the following provisions shall be in force instead thereof, viz.:

(1) Where the medical officer of health of any local authority (*c*), or any other registered medical practitioner (*d*), certifies that the cleansing and disinfecting of any house (*e*), or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease (*f*), the clerk to the local authority (*g*) shall give notice in writing to the owner or occupier (*h*) of such house or part thereof that the same and any such articles therein will be cleansed and disinfected by the local authority at the cost of such owner or occupier, unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part thereof and any such articles therein to the satisfaction of the medical officer of health (*i*), within a time fixed in the notice (*k*).

This section now applies to port sanitary districts: see note to the Public Health (Ports) Act, 1896, *post*, p. 1006.

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The powers of a local authority in this direction may be extended if the P. H. A., 1907, s. 56 ("filthy and dangerous articles to be purified"), and s. 66 ("cleansing and disinfecting of premises, etc."), be applied to their district by an Order of the L. G. B. (now M. of H.). See that Act, *post*, p. 1019.

(*a*) The opening words of the section which applied only to London, were repealed by the P. H. (London) A., 1891, and the section is here set out only so far as it is still in force. As to London, see s. 60 of the Act of 1891.

(*b*) If the adoption is rescinded, s. 120 will again be in force in the district.

(*c*) The medical officer may be the person temporarily acting as such (see s. 2, *ante*, p. 807). For the definition of the local authority, see 52 & 53 Vict. c. 72, s. 16, *ante*, p. 804, which is applied to this Act by s. 2.

(*d*) See the note to 51 & 52 Vict. c. 41, s. 18, *ante*, p. 752.

(*e*) There is no provision extending the meaning of the term "house" to tents, vans, or sheds, as in 52 & 53 Vict. c. 72, s. 13. But by reason of the reference to an occupier later on in the section, an occupier being a person defined by s. 16 of that Act (see s. 2, *ante*, p. 807), the section may apply to a ship, the master being the occupier.

With reference to the disinfection of public elementary schools after an outbreak of infectious disease, the L. G. B. have stated that under the general law the responsibility for carrying out whatever measures of disinfection may be necessary at such schools devolves in ordinary circumstances upon the local education authority rather than the sanitary authority. In any district in which the provisions of s. 5 of the Infectious Disease (Prevention) Act, 1890, are in force, the district council possess statutory powers as regards disinfection, and the Board are advised that a school may properly be regarded as a "house" within the meaning of this section. The expense of the disinfection of a public elementary school provided by the local education authority seems to the Board to be legally payable by that authority. As regards non-provided schools, s. 29 of the Education Act, 1921, may be thought to impose the liability for the expense upon the local education authority; but this is a point which, in the event of a question arising in any individual instance, could be determined by the Board of Education under s. 29 (9) of the Act. *Cf. Gillow* v. *Durham C. C.*, [1913] A. C. 54; 77 J. P. 105.

(*f*) It should be borne in mind that there are other provisions in the P. H. A., 1875, the object of which is to prevent or check infectious disease by means of the cleansing or disinfection of premises. Thus, s. 46, *ante*, p. 115, contains provisions for the cleansing of houses in a filthy condition, where on the certificate of any two medical practitioners it appears to the local authority that the health of any person is affected or endangered, or when such cleansing would tend to prevent or check infectious diseases; under s. 80, *ante*, p. 156, the local authority may make byelaws for taking precautions in the case of an infectious disease in a common lodging-house, and such byelaws may provide for cleansing and disinfection; and similar byelaws for houses let in lodgings may be made under s. 90, *ante*, p. 161. See also s. 52 of the P. H. A., 1907, as to an infected person not being allowed to engage in any occupation; s. 55 as to sending infected clothes to laundries; s. 57 as to the keeping from school of children who have been suffering from infectious disease or been exposed to infection; s. 58 as to furnishing list of scholars where a scholar in a school is suffering from an infectious disease; s. 59 as to the use of books from public libraries by infected persons; s. 63 as to the conveyance of infected persons in public vehicles; s. 64 as to the disinfection of public vehicles which have been exposed to infection; and s. 68 as to the holding of wakes over the bodies of persons dying of infectious disease; and see ss. 53, 54, 56, 60—62, 65, 66, and 67 of the same Act. The whole Act is set out *post*, p. 1019. No section will be operative until it has been applied in any district by an Order of the M. of H. See also s. 109 of the Factory and Workshops Act, 1901, in App. I., *post*, Vol. II., as to penalties for allowing wearing apparel to be made in a place where there is scarlet fever or small-pox, and s. 110 as to prohibition of home work in places where there is infectious disease. As to closing, or excluding particular children from, public elementary schools reference may be made to a lengthy memorandum (October, 1909) prepared by the medical officers of the L. G. B. and Board of Education.

(*g*) The P. H. A., 1875, s. 120, *ante*, p. 227, provides for the giving of the notice by the local authority. As such a notice would in any case be authenticated by the clerk's signature under s. 266, it would appear at first sight that the express reference to the clerk involved no change. In reality it involves an important change,

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for while the giving of the notice by the authority requires a direction by them at a meeting, the clerk must now act without reference to the authority, and without waiting for a meeting.

(*h*) See the definition of "occupier" in 52 & 53 Vict. c. 72, s. 16, *ante*, p. 805, incorporated by s. 2 of this Act.

(*i*) The opinion of the L. G. B. was sought as to whether a medical officer of health should, as part of his duties, inspect premises after disinfection to see that the work was properly carried out. This Act had been adopted by the urban district council, and consequently s. 120 of the P. H. A., 1875, was not in force in the district, having been superseded by s. 5 of this Act. The Board stated that it seemed to them that the provisions of s. 5 must, in the absence of any express enactment to the contrary, be construed as leaving to the medical officer of health the responsibility of determining what action on his part is necessary for satisfying himself as to the sufficiency of any particular cleansing and disinfection.

(*k*) Under the P. H. A., 1875, s. 120, *ante*, p. 227, the notice required the owner or occupier to cleanse within a specified time. The text requires him to say within twenty-four hours of receipt of the notice whether or no he intends to cleanse within the specified time.

(2) If, within twenty-four hours from the receipt of the notice, the person to whom the notice is given does not inform the local authority as aforesaid, or if, having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected as aforesaid within the time fixed in the notice, the house or part thereof and articles shall be cleansed and disinfected by the officers of the local authority (*a*) under the superintendence of the medical officer of health, and the expenses incurred may be recovered from the owner or occupier in a summary manner (*b*).

(*a*) Section 17, *post*, p. 818, gives a power of entry to the officers upon producing an authority in writing. Obstruction of the officers is an offence punishable under s. 16. As to the provision of temporary shelter or house accommodation for the members of a family who have been compelled to leave their dwelling, to enable it to be disinfected, see s. 15, *post*, p. 817.

(*b*) *I.e.*, by summary proceedings before a court of summary jurisdiction. The expenses will be a civil debt within the meaning of the S. J. A., 1879, ss. 6, 35.

Inasmuch as this Act is not directed to be read as one with the Act of 1875, and as no compensation clause is contained in this Act, it would appear that if articles are unavoidably damaged whilst being disinfected under this or the next sub-section, no compensation will be payable, though there would be a right of action should damage ensue from negligence.

(3) Provided that where the owner or occupier of any such house or part thereof is unable in the opinion of the local authority, or of their medical officer of health, effectually to cleanse and disinfect such house or part thereof, and any article therein likely to retain infection, the same may without any such notice being given as aforesaid, but with the consent of such owner or occupier, be cleansed and disinfected by the officers of and at the cost of the local authority.

This proviso is very similar to that contained in s. 120 of the P. H. A., 1875. The inability to cleanse, etc., need not arise from poverty; it may arise from want of proper appliances.

As to the fund out of which the expenses of the local authority will be defrayed, see s. 20, *post*, p. 818.

See the note to the last sub-section as to articles damaged during disinfection.

Section 6. Disinfection of bedding, etc.

6. Any local authority (*a*), or the medical officer of health (*b*) of any local authority generally empowered by the authority in that behalf (*c*), may by notice in writing require the owner of any bedding, clothing, or other articles which have been exposed to the infection of any infectious disease (*d*) to cause the same to be delivered over to an officer of the local authority for removal for the purpose of disinfection; and any person who fails to comply with such a requirement shall be liable to a penalty not exceeding ten pounds (*e*).

The bedding, clothing, and articles shall be disinfected by the authority, and shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage (*f*) the authority shall compensate the owner for the same and the amount of compensation shall be recoverable in, and in case of dispute shall be settled by, a court of summary jurisdiction (*g*).

This section does not on adoption, like the preceding section, repeal s. 120 of the Act of 1875; it merely modifies it.

See also ss. 56 and 66 of the P. H. A., 1907, *post*, pp. 1055, 1059.

(*a*) See the definition of a local authority in 52 & 53 Vict. c. 72, s. 16, *ante*, p. 805.

(*b*) See s. 2, *ante*, p. 807.

(*c*) This means that if the authority give a general power to act under this section, he may give the notice without waiting for any express sanction.

(*d*) As to the definition of "infectious disease," see s. 2, *ante*, p. 807, and the notes thereto.

(*e*) As to the recovery of this penalty, see s. 18, *post*, p. 818.

(*f*) This expression implies that the authority are not to be liable for all damage which may be done by the removal and disinfection of the bedding, etc., but only for such damage as may have been unnecessary, *i.e.*, such as might with reasonable care have been avoided. This section, it should be observed, does not interfere with the power of the authority to direct the destruction of bedding, etc., on payment of compensation under s. 121 of the P. H. A., 1875, *ante*, p. 229.

(*g*) For the definition of a "court of summary jurisdiction," see the Interpretation Act, 1889, s. 13 (11).

Penalty on persons ceasing to occupy houses without previous disinfection or giving notice to owner or persons making false answers.

7. (*a*) Every person who shall cease to occupy any house, room, or part of a house in which any person has within six weeks previously been suffering from any infectious disease (*b*) without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a registered medical practitioner (*c*), as testified by a certificate signed by him (*d*), or without first giving to the owner of such house, room, or part of a house, notice of the previous existence of such disease, and every person ceasing to occupy any house, room, or part of a house, and who, on being questioned by the owner thereof, or by any person negotiating for the hire of such house, room, or part of a house, as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease knowingly makes a false answer to such question shall be liable to a penalty not exceeding ten pounds (*e*).

It should be observed that there is no implied warranty on the taking of furnished lodgings that the intended tenant is a fit and proper person to occupy them and is not suffering from an infectious disease (*Humphreys* v. *Miller*, [1917] 2 K. B. 122. And see the cases cited in the note to s. 28 of the Housing Act, 1919, *post*, Vol. II.

(*a*) Where this section of the Act is in force, the authority are required by s. 14,

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post, p. 817, to give notice of its provisions to the occupier of any house in which they are aware that there is a person suffering from an infectious disease.

(*b*) For the definition of "infectious disease," see s. 2, *ante*, p. 807, and the note thereto.

(*c*) The practitioner may be any registered medical man, not necessarily the medical officer of health; he will generally be the doctor who has been in attendance on the patient.

(*d*) The section does not provide that the practitioner must give such certificate even when so satisfied. If a certificate is refused, the outgoing tenant can only satisfy the terms of the section by giving notice to the owner. If after such notice the owner lets the house, etc., without previous disinfection, he may be liable to conviction under s. 128 of the P. H. A., 1875, *ante*, p. 235, if the disease was a "dangerous infectious disorder."

(*e*) As to the recovery of this penalty, see s. 18, *post*, p. 818.

Prohibiting retention of dead bodies in certain cases.

8. No person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary (*a*) or in a room not used at the time as a dwelling-place, sleeping-place, or workroom (*b*), for more than forty-eight hours, the body of any person who has died of any infectious disease (*c*).

(*a*) A public mortuary may be provided by a sanitary authority under the P. H. A., 1875, s. 141, and by *ibid.*, s. 142, where the body of one who has died of an infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order, and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate; but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

A mortuary may also be provided by a burial board with the consent of the vestry under 15 & 16 Vict. c. 85, s. 42: see p. 250, *ante*.

The text applies to any public mortuary, however provided.

(*b*) This section will have no application where the body is not kept in a room used as a dwelling-place, sleeping-place, or workroom. It was intended to provide for cases in which the family of the deceased have no place to keep the body, except a place where they live, or sleep, or work.

(*c*) See the definition of "infectious disease" in s. 2, *ante*, p. 807. For the penalty for contravening this section and recovery thereof, see ss. 16 and 18, *post*, pp. 817, 818.

Where a local Act provided that "any person who being in charge of the body of any person who has died from any infectious disorder or infectious disease shall permit or allow any other person unnecessarily to come into contact with such body shall be liable to a penalty," it was held that in order to constitute an offence under the Act it was not necessary to prove that there had been actual physical contact with the dead body: it was sufficient if there was evidence that a person had been in such close proximity to the dead body as necessarily to expose such person to the risk of contagion (*Kitchen* v. *Douglas* (1916), 85 L. J. K. B. 462; 80 J. P. 47).

Bodies of persons dying of infectious diseases in hospital, etc., to be removed only for burial.

9. If any person shall die from any infectious disease (*a*) in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person

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or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried or taken direct to some cemetery of place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds (*b*). Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary (*c*), and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

(*a*) See the definition of "infectious disease." s. 2, *ante*, p. 807.
(*b*) As to the recovery of this penalty, see s. 18, *post*, p. 818.
(*c*) See the notes to s. 8, *ante*, p. 814.

Justices may in certain cases order dead bodies to be buried.

10. Where the body of any person who has died from any infectious disease (*a*) remains unburied elsewhere than in a mortuary (*b*) or in a room not used at the time as a dwelling-place, sleeping-place, or work-room, for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building (*c*), any justice may, on the application of the medical officer of health, order the body to be removed at the cost of the local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may, in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial (*d*).

(*a*) See the definition in s. 2, *ante*, p. 807.
(*b*) See the notes to s. 8, *ante*, p. 814.
(*c*) This clause applies generally to the keeping of a dead body in any place whatsoever so as to endanger the health of the persons in the house or in adjoining or neighbouring houses; and it applies to any dead body, not merely to the body of a person who has died of an infectious disease.
(*d*) Compare the provisions of the P. H. A., 1875, s. 142, *ante*, p. 251.

The person in whose house the dead body lies is bound by common law to inter the body decently (*R.* v. *Price* (1884), 12 Q. B. D., at p. 252). On this ground it was held that the authorities of a public hospital, and not the guardians, were liable to bury a person who had died in the hospital (*R.* v. *Stewart* (1841), 10 L. J. M. C. 40; 12 A. & E. 773). An executor is liable to pay funeral expenses (*Brice* v. *Wilson*, cited in *Green* v. *Salmon* (1838), 8 A. & E. 348; *Rogers* v. *Price* (1829), 3 Y. & J. 28). A husband is liable for the expenses of burying his wife (*Jenkins* v. *Tucker* (1788),

Note to Section 10.

1 H. Bl. 91; *Ambrose* v. *Kerrison* (1851), 20 L. J. C. P. 135; 10 C. B. 776; *Bradshaw* v. *Beard* (1862), 12 C. B. (N.S.) 344; 6 L. T. 458. And see *In re McMyn*, *Lightbown* v. *McMyn* (1886), 33 Ch. D. 575). A parent is bound to provide for the burial of his child if he has the means, but not if he has no means, nor is he bound to apply for relief by way of loan from the guardians to enable him to do so (*R.* v. *Vann* (1851), 21 L. J. M. C. 39; 2 Den. C. C. 325).

Disinfection of public conveyances if used for carrying corpses.

11. (*a*) Any person who hires or uses a public conveyance (*b*) other than a hearse for the conveyance of the body of a person who has died from any infectious disease (*c*), without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance, other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act (*d*).

Further obligations are imposed in respect of public vehicles in districts to which the L. G. B. or the Ministry of Health have applied the P. H. A., 1907, s. 63 ("Prohibiting conveyance of infected persons in public vehicles") or s. 64 ("Driver, etc., of infected person to give notice"). See these sections, *post*, p. 1058.

(*a*) This section supplies an omission from the P. H. A., 1875, s. 126, *ante*, p. 233.

(*b*) A public conveyance means one which plies for hire, such as a hackney or stage carriage; it is not quite clear that it would include a carriage hired from an innkeeper, jobmaster, or undertaker; see, however, *Hawkins* v. *Edwards*, [1901] 2 K. B. 169; 65 J. P. 423.

(*c*) See the definition in s. 2, *ante*, p. 807.

(*d*) As to the penalty for the offence and its recovery, see ss. 16, 18, *post*, pp. 817, 818.

Detention of infected person without proper lodging in hospital by order of justice.

12. Any justice of the peace acting in and for the district of the local authority (*a*), upon proper cause shown to him, may make an order directing the detention in hospital at the cost of the local authority of any person suffering from any infectious disease (*b*), who is then in an hospital for infectious disease and would not on leaving such hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disorder by such person (*c*). Any order so to be made by any such justice may be limited to some specific time, but with full power to any justice to enlarge such time as often as may appear to him to be necessary. It shall be lawful for any officer of the local authority or inspector of police acting in the district, or for any officer of the hospital, on any such order being made to take all necessary measures and do all necessary acts for enforcing the execution thereof (*d*).

(*a*) Since the passing of the L. G. A., 1888, an urban district cannot be in two counties (see *ibid.*, s. 50, *ante*, p. 767). If it is a borough having a separate commission of the peace and separate quarter sessions, it may be that the borough justices alone will have jurisdiction in the borough; if it has no separate quarter sessions, the county and borough justices will usually have concurrent jurisdiction. See the Municipal Corporations Act, 1882, s. 154, and note to the L. G. A., 1888, s. 38 (7), *ante*, p. 765.

It should be borne in mind that a county justice has, generally speaking, jurisdiction throughout his entire county, not merely in the division in which he resides or usually acts (see *R.* v. *Beckley* (1887), 20 Q. B. D. 187; 52 J. P. 120; *Caistor R. D. C.* v. *Taylor* (1907), 71 J. P. 310; 97 L. T. 281; *R.* v. *Beacontree JJ.*, [1915] 3 K. B. 388; 79 J. P. 461).

(*b*) See the definition in s. 2, *ante*, p. 807.

Note to Section 12.

(*c*) Guardians have power to detain in a workhouse persons therein suffering from infectious or contagious disease under 30 & 31 Vict. c. 106, s. 22. The provision in the text applies to sick persons who are in the hospital for infectious disease.

(*d*) This means that the officer of the local authority, inspector of police, or hospital officer may, if necessary, forcibly detain the sick person.

Infectious rubbish thrown into ashpits, etc., to be disinfected.

13. (*a*) Any person who shall knowingly cast, or cause or permit to be cast, into any ashpit, ashtub, or other receptacle for the deposit of refuse matter any infectious rubbish (*b*) without previous disinfection, shall be guilty of an offence under this Act (*c*).

(*a*) When this section is in force notice of its provisions must be given to the occupier of any house in which there is a person suffering from infectious disease. See the next section.

(*b*) It is difficult to say what is infectious rubbish. It would seem to include everything which comes from the room of a person suffering from infectious disease which might, in the ordinary course, be thrown into the ashpit if the disease were not infectious, such as poultices, rags, etc.

(*c*) As to the penalty for this offence and its recovery, see ss. 16, 18, *post*, pp. 817, 818.

Notice of certain provisions.

14. Where sections seven and thirteen of this Act, or either of them, are in force in any district, the local authority shall give notice of the provisions thereof to the occupier of any house in which they are aware that there is a person suffering from an infectious disease.

An authority can conveniently fulfil this requirement by having leaflets printed stating the effect of the sections, and by delivering these to occupiers when necessary. It is submitted that an authority's neglect will not excuse an occupier for breach of s. 7 or s. 13. *Cf. Duncan* v. *Knill* (1907), 71 J. P. 287; 96 L. T. 911.

Temporary shelter, etc.

15. The local authority shall from time to time provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared, who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority.

This applies to cases where a dwelling has to be disinfected under s. 5, *ante*, p. 810. When s. 61 of the P. H. A., 1907, has been applied to any district by the L. G. B., or the Ministry of Health, the powers of the local authority in this direction will be increased. See that section, *post*, p. 1057.

Penalties.

16. Every person who shall wilfully obstruct any duly authorised officer of the local authority in carrying out the provisions of this Act, or who shall obstruct the carrying out of an order made by a justice under this Act (*a*), or who shall offend against any enactment of this Act for the time being in force in any district by which no penalty is specifically imposed (*b*), shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues (*c*).

This section and sections 17, 18, 20, *infra*, apply to port sanitary districts so far as they relate to powers, etc., under s. 5, *ante*, p. 810, assigned to port sanitary authorities by the Order referred to on p. 808, *ante*.

(*a*) A justices' order may be made under ss. 4, 10, 12.

(*b*) See ss. 4, 8, 11, 13.

Note to Section 16. (*c*) As to the recovery of penalties, see s. 18, *infra*. See also definition of "daily penalty" by s. 11 (3) of the P. H. A., 1890, *post*, p. 826, and note thereto.

Power of entry for purposes of s. 5.

17. For the purpose of carrying into effect the provisions of section five (*a*) of this Act the local authority may, by any officer appointed in that behalf, who shall produce his authority in writing (*b*), enter on any premises between the hours of ten o'clock of the forenoon and six o'clock of the afternoon.

See first note to s. 16, *supra*.

(*a*) Section 5, *ante*, p. 810, provides for the cleansing and disinfection of premises, etc.

(*b*) This authority may apparently be authenticated by the signature of the clerk (see the P. H. A., 1875, s. 266, *ante*, p. 593). If not, it must be under seal, as a local authority can give no authority except under seal. It may be inferred from the language in the text that a special authority must be given in each case.

Recovery and application of penalties.

18. Every penalty imposed by this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the local authority, or of their duly authorised officer, but not otherwise, and shall be paid to the local authority.

See first note to s. 16, *supra*.

The effect of the provision in the text is to make the penalties recoverable by summary proceedings before justices (see the S. J. A., 1879, s. 41).

A common informer cannot proceed for penalties under this Act. It will apparently be sufficient to give to an officer, *e.g.*, the clerk, a general authority to lay information under this Act on behalf of the authority.

Superseding in certain cases of provisions in local Acts.

19. Where a provision of this Act is put in force in any district in which there is any similar provision in force contained in any local Act, such last-mentioned provision shall cease to be in operation.

Many local Acts contain provisions similar to those of this Act. Such provisions will, for the time being, be superseded if the corresponding sections of this Act are adopted. Compare s. 14 of the Infectious Disease (Notification) Act, 1889, *ante*, p. 804.

Expenses.

20. Any expenses incurred by a local authority in the execution of any of the provisions of this Act, including the reasonable remuneration of any veterinary inspector or surgeon employed under section four, shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses.

See first note to s. 16, *supra*.

The expenses of an urban authority will be paid as provided by the P. H. A., 1875, ss. 207, 208, *ante*, pp. 469, 472, *i.e.*, in general out of the general district fund.

General expenses of a rural authority are paid under the P. H. A., 1875, s. 230, *ante*, p. 514, out of the poor rates of all the parishes in the district.

Power of local authority to rescind adoption of Act.

21. Any resolution adopting all or any of the sections of this Act may be rescinded, either wholly or as regards any of the adopted sections, by resolution of the local authority, but notice of the meeting at which such resolution is to be proposed, and of the intention to propose the same, shall be given, and such resolution shall be published, and shall come into operation, in like manner and at such time as is hereinbefore provided with respect to resolutions adopting this Act, and

a copy of the resolution shall be sent to the Local Government Board when it is published (*a*). Section 21.

On the resolution coming into effect the sections of this Act, the adoption of which is thereby rescinded, shall cease to extend to the district.

The provision hereinbefore contained, as to evidence of and objections to the effect of a resolution adopting this Act, shall apply to any resolution rescinding such adoption (*b*).

(*a*) In order to rescind the adoption of the Act or of any section of it, it will be necessary to follow the procedure prescribed by s. 3. Fourteen clear days' notice of the meeting and of the intention to propose the rescinding resolution must be given to each member of the local authority. The resolution, if passed, must be published by advertisement in a local newspaper and by handbills, etc., and it will come into operation on the day fixed by the local authority, not being less than a month after the first publication of the advertisement.

(*b*) The provisions here referred to are those contained in the concluding paragraph of s. 3.

22. This Act shall not apply to Scotland. Extent of Act.

23. [*Application to Ireland.*]

24. Nothing in or done under this Act, shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or of any Order, licence, or act of her Majesty's Privy Council or the Local Government Board made, granted, or done, or to be made, granted, or done, thereunder; or of any Order, regulation, licence, or act of a local authority made, granted, or done under any such Order of the Privy Council or the Local Government Board; or exempt any dairy, or building, or thing whatsoever, or any body or person from the provisions of any general Act relating to dairies, milk, or animals, already passed, or to be passed in this or any future session of Parliament. Saving for Acts relating to dairies, animals, etc.

The Contagious Diseases (Animals) Act, 1886, s. 9, transferred from the Privy Council and the local authorities for the administration of the Contagious Diseases (Animals) Acts to the L. G. B. and the sanitary authorities throughout the country the powers given to the former by the 41 & 42 Vict. c. 74, s. 34, with reference to dairies, cowsheds, and milkshops. The provisions of this section were repealed by the Milk and Dairies (Consolidation) Act, 1915, 5 & 6 Geo. 5, c. 66. All the other provisions of the Contagious Diseases (Animals) Acts, 1878 to 1886, are now repealed and replaced by the Diseases of Animals Act, 1894, which has been amended by the Diseases of Animals Acts, 1896, 1903, 1909, and 1910, and the Poultry Act, 1911.

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

(53 & 54 VICT. c. 59.)

An Act to amend the Public Health Acts. [18th August 1890.]

PART I.

GENERAL.

1. This Act is divided into Parts as follows: Division of Act into Parts.

Part I.—General.

Part II.—Telegraph, etc. wires.

Section 1.

Part III.—Sanitary and other provisions.
Part IV.—Music and dancing.
Part V.—Stock.

Short title, construction and extent of Act.

2.—(1) This Act shall be construed as one with the Public Health Acts (*a*).

(2) Part One of this Act shall extend to England and Wales and Ireland, exclusive of the administrative county of London. Parts Two, Three, Four, and Five shall extend to any district in which they are respectively adopted under the provisions of this Act (*b*).

(3) This Act may be cited as the Public Health Acts Amendment Act, 1890, and this Act and the Public Health Acts may be cited together as the Public Health Acts (*a*).

(*a*) There is no definition in this Act of the expression "Public Health Acts" so far as it relates to England and Wales. There is, however, a definition in the Short Titles Act, 1896, and see the list in 51 & 52 Vict. c. 52, s. 1, *ante*, p. 789.

As to the effect of the provision that the Act shall be construed as one with earlier Acts, see *Read* v. *Joannon* (1890), 25 Q. B. D., *per* COLERIDGE, C.J., at p. 304; *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.*, [1914] 3 K. B., *per* Lord SUMNER, at p. 782; *R.* v. *Essex JJ., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345.

(*b*) The adoption of these parts of the Act is provided for by the next section.

Ad option of Act by local authorities.

3. The following provisions shall have effect with regard to the adoption of the Parts of this Act, which are adoptive, by local authorities:

(1) An urban authority may adopt all or any of such Parts (*a*).

(2) A rural authority may adopt Part Three so far as it is declared by this Act to be applicable to such authority (*b*), without prejudice to the provisions of this Act relating to the investing of rural authorities with urban powers (*a*).

(*a*) Notice that the whole of a Part must be adopted so far as it is applicable. Particular sections cannot be adopted to the exclusion of the others, as under the Infectious Disease (Prevention) Act, 1890, s. 3, *ante*, p. 807. If, however, a rural council desire to obtain the powers of one or more sections of Part III. without putting into operation other provisions contained in that Part, or require the additional powers for part of their district only, they can apply to the Ministry of Health for an order under s. 5. By such an order a rural council may also obtain powers under sections comprised in other parts of the Act.

Where at the time of the formation of part of a rural district into an urban district certain of the adoptive Acts were in force in the rural district, a question arose as to whether the Acts would continue to be in operation in the newly formed district. The L. G. B. disclaimed authority to determine the question, but stated that it appeared to them to be desirable that fresh proceedings for the adoption of the Acts should be taken in each case. This is now generally provided for in the order for the formation of the district.

(*b*) The provisions of Part III., which are applicable in rural sanitary districts, are those mentioned in s. 50, *post*, p. 860. Mention is made in the notes to each section whether it is or is not so applicable.

(3) The adoption shall be by a resolution passed at a meeting (*a*) of the local authority; and one calendar month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of

the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England (*b*).

(*a*) The meeting need not be a special meeting; the resolution may be passed at an ordinary meeting so long as the special notice is given as provided by the text. See form of resolution in the Encyclopædia of Forms and Precedents, Vol. X., p. 508.

(*b*) The provisions of this sub-section are similar to those in 53 & 54 Vict. c. 34, s. 3, *ante*, p. 807, except that the notice must be a month's notice. As to the manner in which the notices should be given, see the notes to that section. For a form of notice see the Encyclopædia of Forms and Precedents, Vol. X., at p. 507.

(4) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed (*a*), and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month (*b*) after the first publication of the advertisement of the resolution as the authority may by the resolution fix (*b*), and upon its coming into operation such Parts of the Act as are adopted shall extend to that district.

(*a*) For a form of notice see the Encyclopædia of Forms and Precedents, Vol. X., p. 508. The fixing of the notices on the church and chapel doors is not required by the corresponding provisions of 53 & 54 Vict. c. 34, s. 3, *ante*, p. 807.

It is not quite clear that the notices need be fixed to the doors of Nonconformist chapels. It has been held under 7 Will. 4 & 1 Vict. c. 45, s. 2, which requires notices of vestry meetings to be affixed "on or near the door of all the churches and chapels within such parish or place," that such notices need not be affixed to churches or chapels other than those of the Church of England (*Ormerod* v. *Chadwick* (1847), 11 J. P. 138; 16 M. & W. 367; *Ex parte Warblington* (1854), 18 Jur. 494; *R.* v. *Whipp* (1843), 4 Q. B. 141; 12 L. J. M. C. 64; *Edwards* v. *Hatton* (1866), L. R. 1 Ad. & Ec. 21; 30 J. P. 211; *R.* v. *Wolferstan*, [1893] 2 Q. B. 451). Compare the provisions in 6 & 7 Vict. c. 18, s. 23, where there is express mention of chapels not belonging to the Established Church.

(*b*) The L. G. B. have expressed the view that where the resolution does not fix a definite date on which it shall come into operation the validity of the resolution is very doubtful, and in such cases they have suggested that proceedings for adoption shall be begun afresh. The Board do not consider that the date when the resolution for the adoption is to come into force can be fixed by a resolution of the council passed at a later meeting.

The expression "one month" means "one calendar month" (see the Interpretation Act, 1889, s. 3). In a case where a resolution was fixed to come into operation at a time equivalent to four weeks from its first advertisement, the L. G. B. expressed the opinion that proceedings should be commenced afresh.

(5) A copy of the resolution shall be sent—

(a) Where any Part of the Act is adopted, to the Local Government Board;

Section 3.

(b) Where Part Two is adopted, to the Board of Trade;
(c) Where Part Four is adopted, to a Secretary of State.

In any case a copy must be sent to the L. G. B., now the Ministry of Health. When Part II. is adopted a copy must also be sent to the Board of Trade, which is the controlling body with regard to telegraph wires. And for a similar reason, when Part IV. is adopted, a copy must also be sent to the Secretary of State.

(6) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

This sub-section is practically identical with the concluding clause of 53 & 54 Vict. c. 34, s. 3. See the notes to that section, *ante*, p. 808.

Expenses of local authority.

4. All expenses incurred or payable by a local authority in the execution of this Act, and not otherwise provided for, may be charged and defrayed in the case of an urban authority as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a rural authority as part of their general expenses under the Public Health Acts.

As to the expenses of an urban authority, see ss. 207 *et seq* of the P. H. A., 1875, *ante*, p. 469. Such expenses will in general be paid out of the general district fund. As to the general expenses of a rural authority, see ss. 229, 230 of the P. H. A., 1875, *ante*, pp. 510, 514.

Power to Local Government Board to extend particular provisions to rural districts.

5. The Local Government Board may declare that any of the provisions contained in any Part of this Act which are not in force in any rural sanitary district (*a*) shall be in force in that district, or any part thereof, and may invest a rural sanitary authority with any of the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of any Part of this Act, in like manner, and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875, and in such case the date of the declaration of the Local Government Board under this section shall be substituted for the date of the adoption of this Act or any Part thereof (*b*).

(*a*) The provisions of this Act, which are not in force in, and which cannot be adopted in, a rural district, are those contained in Parts II., IV., and V., and those sections and parts of sections in Part III. which are not mentioned in s. 50, *post*, p. 860.

(*b*) See s. 276 of the P. H. A., 1875, *ante*, p. 613, and notes thereto.

The effect of this section, as incorporated by the text, is to enable a rural sanitary authority (now rural district council), or ratepayers whose assessments are equal to one-tenth of the rateable value of the district or contributory place, to apply to the L. G. B., now the Ministry of Health, for an Order investing the rural authority with powers under the Act. The Order must be published in the London Gazette.

Under the L. G. A., 1894, s. 25, application may also be made by a parish council or county council (for urban powers to be conferred upon a rural district council).

The practice of the Ministry of Health in regard to applications for powers under

the present Act for rural parishes is explained in many cases in the notes to the various sections.

Note to Section 5.

A difficulty occurs in many cases in the matter of the incidence of expenses. The Ministry frequently insert a provision in Orders under s. 276 of the Act of 1875 declaring the expenses to be incurred thereunder to be chargeable as special expenses. Such a provision cannot, however, be made in the case of Orders under s. 5 of the present Act, having in view the provisions of the latter part of s. 4 of the Act, unless section 49 is in force. See that section and the notes thereto.

See also note (*a*) to s. 3.

6. Offences under this Act may be prosecuted, and penalties, forfeitures, costs, and expenses recovered in like manner and subject to the same provisions as offences which may be prosecuted and penalties, forfeitures, costs, and expenses which may be recovered in a summary manner under the Public Health Acts.

Legal proceedings, etc.

Offences under byelaws made under this Act may also be similarly prosecuted. See the P. H. A., 1907, s. 6, *post*, p. 1023.

The provisions of the P. H. A., 1875, as to the prosecution of offences and the recovery of penalties, etc., are contained in Part VII. of that Act, *ante*, p. 551. The procedure is that prescribed by the Summary Jurisdiction Acts before a court of summary jurisdiction being a petty sessional court (s. 251). Proceedings must be taken within the period of six months after the matter of information or complaint arose (47 & 48 Vict. c. 43, repealing and substituting for s. 252 the corresponding provisions of the Summary Jurisdiction Acts). The proceedings can be taken only by the local authority, or a party aggrieved, or a person having the written consent of the Attorney-General (s. 253). The penalties are to be paid to the local authority, but if there is an informer he is to receive one-half (s. 254). A justice may act though he is a member of the local authority (s. 258). The local authority may appear by their clerk or any member or officer generally or specially authorised (s. 259). Demands below £50 may be recovered in the county court (s. 261). The proceedings are not to be quashed on *certiorari* (s. 262).

7.—(1) Any person aggrieved—

Appeals to quarter sessions.

(a) By any order, judgment, determination, or requirement of a local authority under this Act;

(b) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act;

(c) By any conviction or order of a court of summary jurisdiction under any provision of this Act;

may appeal in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions.

The expression "this Act" means not merely this Act, but includes the Public Health Acts, with which this Act is to be read as one. See s. 2, *ante*, p. 820 (*R.* v. *Essex JJ., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345.

This general provision is subject to the qualification contained in the next subsection. The cases in which an appeal will lie under this provision are indicated in the notes to the several sections. The existence of a right of appeal against the order, etc., of a local authority will not affect the duty of that authority to hear judicially the application for such order. As to this duty, see *R.* v. *London C. C.*, [1918] 1 K. B. 68.

The provisions of the Summary Jurisdiction Acts as to appeals to quarter sessions are contained in 42 & 43 Vict. c. 49, s. 31, set out in the notes to s. 269 of the P. H. A., 1875, *ante*, p. 602. In cases where a right of appeal to quarter sessions already existed under earlier Acts, a question may arise whether the procedure prescribed under those Acts is repealed by the substitution of the procedure under the Summary Jurisdiction Acts. See *Edelsten* v. *London C. C.*, [1918] 1 K. B. 81; 81 J. P. 294.

A regulation was made under s. 4 of the London Hackney Carriages Act, 1850, which does not provide any penalty for breach of a regulation so made. The London

Note to Section 7.

Hackney Carriage Act, 1853, provides by s. 19 that for every offence against the provisions of that Act, for which no special penalty is appointed, the offender shall be liable to a penalty of 40s., and by s. 21 that the Act is to be construed as one with the London Hackney Carriages Acts, 1843, 1850. It was held, that the effect of ss. 19 and 21 was to create one code of law for the regulation of hackney carriages; that s. 21 was a general penalty section which would apply to a breach of any provision of the three Acts which was not specifically provided for elsewhere; and that a breach of a regulation made under an Act was a breach of the Act itself (*Willingale* v. *Norris*, [1909] 1 K. B. 57; 72 J. P. 495).

In *Hornsey Corporation* v. *Kershaw* (1909), 73 J. P. 335, a court of quarter sessions held that a local authority could appeal where justices refused an order for payment of expenses incurred by the authority in repairing an alleged "single private drain" (see s. 19, *post*, p. 832).

(2) This section shall not apply in cases where there is an appeal to the Local Government Board under section two hundred and sixty-eight of the Public Health Act, 1875.

See s. 268 of the P. H. A., 1875, and the notes thereto, *ante*, p. 595. For the L. G. B. must now be read the Ministry of Health.

It is not clear whether this sub-section bars an appeal to quarter sessions against an order of justices by a defendant who might at an earlier stage have appealed under s. 268 to the L. G. B. against the "decision" of the authority; but *semble* it does. If so, it is still less clear whether in such a case it bars an appeal by the authority. The point does not seem to have been raised in *Hornsey Corporation* v. *Kershaw*, *supra*.

More than one sum in one summons, etc.

8. Any information, complaint, warrant, or summons made or issued for the purposes of this Act, or of the Public Health Acts, may contain in the body thereof or in a schedule thereto several sums.

It is difficult to suggest what is the object of this provision, or what its effect is. The general rule is that an information or complaint must be confined to one offence or matter of complaint (see 11 & 12 Vict. c. 43, s. 10). Under the above provision one complaint and summons may be used for the recovery of several sums. It would appear to have no application to the case of penalties. As to rates, see 25 & 26 Vict. c. 82, and *R.* v. *Glover*, *ante*, p. 506.

Byelaws.

9. All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and any enactment amending or extending those sections, shall apply to all byelaws from time to time made by a local authority under the powers of this Act, except byelaws made under Part Two of this Act.

See ss. 182—187 of the P. H. A., 1875, and the notes thereto, *ante*, pp. 432—446.

Byelaws made under ss. 20, 23, 26, 40, and 44 of this Act must be confirmed by the L. G. B., now the Ministry of Health, under s. 184 of the P. H. A., 1875; byelaws under Part II. must be confirmed by the Board of Trade (see s. 13, *post*, p. 827).

Powers of Act cumulative.

10.—(1) All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

See the P. H. A., 1875, s. 341, *ante*, p. 666. Notwithstanding this provision, the Act itself creates certain exceptions to it. Thus, where s. 22 is in force, s. 38 of the P. H. A., 1875, is repealed; and where s. 34 is in force, the 10 & 11 Vict. c. 34, s. 80, is repealed. But the Act does not repeal or supersede local Acts.

(2) Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, provided that no person shall be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence. Section 10.

The expression "daily penalty" is defined in s. 11 (3), *post*, p. 826.

11.—(1) The expression "ashpit" in the Public Health Acts and in this Act shall for the purposes of the execution of those Acts and of this Act include any ashtub or other receptacle for the deposit of ashes, fæcal matter, or refuse. Interpretation.

The P. H. A., 1875, s. 35, *ante*, p. 96, provides that every newly-erected house must have an ashpit furnished with proper doors and coverings. By s. 36, if a house is without a sufficient ashpit, the owner may be required to provide one. By s. 39, an urban authority may provide ashpits for public accommodation. By s. 40, an ashpit must be constructed and kept so as not to be a nuisance or injurious to health. By s. 41, provision is made for the abatement of a nuisance arising from any defect in an ashpit. Sections 42—44 deal with the cleansing of ashpits. Section 91, *ante*, p. 165, and subsequent sections include, under the definition of nuisances, any ashpit so foul or in such a state as to be a nuisance or injurious to health. In all these sections the expression "ashpit" will have the extended meaning above assigned to it. It seems from the language of the text that an ashpit may be a movable receptacle.

(2) A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts.

Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street.

The first part of this sub-section appears to have been intended to meet a dictum of JESSEL, M.R., who, in *Att.-Gen.* v. *Bidder* (1881), 47 J. P. 263, said that a road paved with wood was not "paved" within the meaning of s. 152 of the P. H. A., 1875. See further as to this case the notes to s. 41, *post*, p. 885.

The second part of the sub-section is an amendment of ss. 150, 152 of the P. H. A., 1875. Section 150 of that Act, *ante*, p. 286, provides that when a street, not being a highway repairable by the inhabitants at large, is not (*inter alia*) paved to the satisfaction of the urban authority, notice may be served on the owners of property fronting the street to pave it, and in their default the urban authority may pave the street, and recover the expenses from the owners. The effect of this sub-section is that an authority may require the road to be asphalted or paved with wood, etc., and that though properly paved in one way, it shall not be deemed to be paved to the satisfaction of the authority unless they also consider the kind of paving suitable for the street. Section 152, *ante*, p. 319, provides that when a street is (*inter alia*) paved to the satisfaction of an urban authority, they may declare it to be a highway repairable by the inhabitants at large. Having regard to the text, they have now a discretion as to the kind of paving which they deem suitable for the street. See the notes to s. 41, *post*, p. 855.

See further on this subject the Private Street Works Act, 1892, *post*, p. 870.

(3) In this Act, if not inconsistent with the context (*a*)—

The expression "local authority" means an urban sanitary authority or a rural sanitary authority, as the case may be, under the Public Health Acts, and the expressions "urban authority" and "rural authority" mean respectively an urban sanitary authority and a rural sanitary authority under those Acts (*b*).

Section 11.

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts (*b*).

The expression "sanitary convenience" includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience (*c*).

The expression "daily penalty" means a penalty for each day on which any offence is continued after conviction therefor (*d*).

The expressions "surveyor," "lands," "premises," "owner," "street," "house," "drain," "sewer" have respectively the same meaning as in the Public Health Acts (*e*).

(*a*) See as to these words the cases mentioned in notes to the P. H. A., 1875, s. 4, *ante*, p. 3. In a case in the House of Lords, Lord SELBORNE said: "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense, whenever that would be properly applicable; but to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable" (*Robinson* v. *Barton Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276).

(*b*) These expressions are defined in the P. H. A., 1875, ss. 6, 9. See, however, the notes to those sections and Part II. of the L. G. A., 1894, *post*, p. 923.

(*c*) The expression "sanitary convenience" is a convenient one, including as it does a number of things which are generally grouped together in the P. H. A., 1875. See, for example, ss. 35, 36, 39 of that Act, *ante*, pp. 96, 102. The word "ashpit" has now an extended meaning (see sub-s. (1), *ante*, p. 825).

(*d*) This definition obviates a difficulty which has often been felt where a daily penalty is imposed for every day an offence continues, the question being in such cases whether the daily penalty is incurred before as well as after conviction; see, for example, the P. H. A., 1875, s. 86, *ante*, p. 159.

(*e*) In the P. H. A., 1875, s. 4, all these expressions are defined: see the notes to that section, *ante*, p. 3. It is not clear that the definitions were necessary regard being had to the provision in s. 2 (1), *ante*, p. 820, that this Act is to be read as one with the Public Health Acts.

12. [*Application to Ireland.*]

PART II.

TELEGRAPH, ETC. WIRES (*a*).

Byelaws for prevention of danger from telegraph wires, etc.

13.—(1) An urban authority may from time to time make, alter, and repeal byelaws (*b*) for prevention of danger or obstruction to the public from posts, wires, tubes, or any other apparatus stretched or placed above, over, along, or across any street (*c*) (whether before or after the adoption of this Part of this Act) (*d*) for the purpose of any telegraph, telephone, lighting, railway signalling, or other purpose (*e*).

(*a*) This Part of the Act may be adopted by an urban authority. It cannot be adopted by a rural council, but it is open to such a council to apply to the Ministry of Health for an order under s. 5 declaring it to be operative in their district or in some part thereof. Instances will presumably be rare in which the powers are required in rural districts and the views of the Board of Trade will probably be required in such a case. See also notes to ss. 3 and 5. When this Part is adopted by an urban authority in manner provided by s. 3, the resolution must be forwarded to the Ministry of Health, and to the Board of Trade, as provided by s. 3 (5), *ante*, p. 821.

(*b*) The provisions of the Public Health Acts do not apply to these byelaws (see s. 9, *ante*, p. 824).

Note to Section 13.

The byelaws made under this section are only for the prevention of danger or obstruction to the public. The observance of them will not necessarily make it lawful to erect wires for the purposes above mentioned. The byelaws will not in any way enable the promoters of any undertaking to erect wires upon or over private property where that cannot otherwise be legally done.

(*c*) For the definition of "street," see s. 11 (3), and notes thereto.

It should be observed that apart from the provisions of this section an urban authority have no power to prevent the suspension of overhead wires above a street unless the wires interfere with its ordinary user as a street: see cases on pp. 278, 279, *ante*, and *Levy* v. *National Telephone Co.* (1897), Times, Dec. 18th (wires above private house).

For disputes as to the laying or erection of telephone wires by the Postmaster-General or his licensees (mainly as to whether the lines should be overhead or underground), see *Wandsworth District Board* v. *P. M. G.* (1884), 4 Ry. and Can. Cas. 301; *P. M. G.* v. *Corporation of London* (1898), 62 J. P. 390; 78 L. T. 120; *P. M. G.* v. *Corporation of Glasgow* (1900), 10 Ry. and Can. Cas. 238; *P. M. G.* v. *Corporation of Edinburgh* (1899), 10 Ry. and Can. Cas. 247; *Tunbridge Wells Corporation* v. *National Telephone Co.* (1900), 83 L. T. 525; *In re P. M. G. and Watford U. D. C.* (1908), 72 J. P. 184; 52 Sol. J. 302; *In re P. M. G. and Woolwich Borough Council* (1908), 72 J. P. 186; 6 L. G. R. 509; *P. M. G.* v. *Tottenham U. D. C.* (1910), 8 L. G. R. 791; *Croydon Corporation* v. *P. M. G.* (1910), 74 J. P. 424; 8 L. G. R. 1005; *P. M. G.* v. *Hendon U. D. C.*, [1914] 1 K. B. 564; 78 J. P. 145; *Dublin C. C.* v. *P. M. G.*, [1914] 2 I. R. 208; *P. M. G.* v. *Hutchings*, [1916] 1 K. B. 774; 80 J. P. 246, and county court cases at 77 J. P. N. 412, 605. *Cf.* the Telegraph (Arbitration) Act, 1909.

As to wires above recreation grounds, see the Telegraph (Construction) Act, 1908, s. 3.

(*d*) The byelaws will apply to wires already erected as well as to those erected after the adoption of this Part of the Act; see, however, sub-s. (6), *infra*.

(*e*) See the partial exemption of apparatus belonging to a railway or canal company in sub-s. (7), *infra*.

The byelaws will not apply to post office wires, or electric lighting wires erected under the Electric Lighting Acts (see s. 15, *post*, p. 829, and the notes thereto).

(2) By such byelaws provisions may be made for the inspection and examination by the urban authority of any such posts, wires, tubes, or other apparatus, and for the prohibition of any such posts, wires, tubes, or other apparatus being or continuing to be stretched or placed as aforesaid in such manner as to be dangerous or to cause obstruction to the public.

(3) Offenders against such byelaws shall be liable to such penalties as may be thereby prescribed not exceeding five pounds for each offence, and a daily penalty not exceeding forty shillings, and the court in addition to awarding any penalty may order the removal of any post, wire, tube, or other apparatus stretched or placed in contravention of any such byelaw made under this section.

The byelaws must themselves prescribe the penalties. For the definition of a daily penalty, see s. 11 (3), *ante*, p. 826. The proceedings will be under the Summary Jurisdiction Acts, and an appeal against a conviction or order will lie to quarter sessions under s. 7 (1), *ante*, p. 823.

(4) Byelaws made under this section and any alteration or repeal of any such byelaw shall not take effect unless and until they have been submitted to and confirmed by the Board of Trade, which Board is hereby empowered to allow or disallow or to modify or amend the same as it may think proper.

The form of byelaws generally approved by the Board of Trade under this section will be found in Shiress Will's Law relating to Electric Lighting and Energy. One

Note to Section 13.

of the chief causes of danger is the liability of the wires to be blown down or broken by snow; these byelaws provide for such a cause of danger.

(5) Reasonable notice of the intended submission for confirmation of any such byelaw, alteration, or repeal shall be given by the urban authority by advertisement in one or more local newspapers circulating in the district to which such byelaws relate, and by circular letter to any company or person owning or leasing any post, wire, tube, or other apparatus to which any byelaw is intended to apply, and such company or person shall be entitled to appear before the Board of Trade and object to the confirmation, alteration, or repeal of any byelaw, and all costs incurred by any parties in reference to the application for or objection to the confirmation, alteration, or repeal of any such byelaw shall be in the discretion of the Board of Trade.

The circular letter must be sent to all owners or lessees of existing posts, wires, etc., other than those mentioned in s. 15, *post*, p. 829. Such owners and lessees will send in their objections, if any, and may appear before the Board of Trade in support of them.

(6) The Board of Trade may exempt from the operation of any such byelaw, alteration, or repeal, for such period as they think proper, not exceeding five years from the confirmation thereof, any post, wire, tube, or other apparatus which shall have been stretched or placed, in the case of a new byelaw, before the confirmation thereof, and in the case of the alteration or repeal of a byelaw, in accordance with such byelaw.

Unless such exemption is made, the byelaws will extend to existing wires as well as to those to be erected after the adoption of this Part of the Act.

(7) Nothing in such byelaws shall extend to or include any apparatus belonging to any railway or canal company, or used by them in connection with their business, and which now is or hereafter shall be fixed or placed by any such company across, over, or along any railway or the towing-path of any canal, provided such apparatus do not project or be not stretched or placed beyond such railway or towing-path over any street, or be not stretched or placed over any street crossing over such railway other than streets crossing any railway on the level.

When a railway crosses above a street, the byelaws will not apply to wires on such railway so long as these do not project beyond the property of the company. Where the street is carried over the railway, the byelaws will not apply to railway wires unless these are carried above the street. When a street crosses a railway on the level, the byelaws will not apply to the railway wires even if they do cross the street.

Danger from exempted telegraph wires.

14.—(1) If any post, wire, tube, or other apparatus so exempted as aforesaid (*a*) is during the period of such exemption in the opinion of the surveyor of the urban authority in such a state or position that immediate danger to any person is to be apprehended (*b*), he may give information to any justice, who may thereupon summon the owner or lessee thereof or other person interested therein forthwith to appear before a court of summary jurisdiction.

(*a*) The exemptions here referred to are those mentioned in sub-ss. (6), (7), of the preceding section. **Note to Section 14.**

(*b*) This does not necessarily mean when danger is apprehended to a particular person. This section will apply if immediate danger is apprehended to any person passing along a street.

(2) The court may thereupon—

(a) Make an order requiring such owner, lessee, or other person, or all or any of them, to remove or remedy the source of danger; or

(b) Make an order authorising the surveyor to do so at the expense of such owner, lessee, or other person, or of all or any of them; or

(c) Make such other order as may appear to the court under all the circumstances of the case to be necessary and proper.

An appeal against such an order will lie to quarter sessions under s. 7, *ante*, p. 823. The expense incurred under clause (b) will apparently be recoverable summarily (see s. 6, *ante*, p. 823).

15.—(1) Nothing contained in this Part of this Act shall— Savings.

(a) Extend to any post, wire, tube, or other apparatus or property of the Postmaster-General:

(b) Extend to any works of any undertakers within the meaning of the Electric Lighting Acts, 1882 to 1888, to which the provisions of those Acts apply.

The Electric Lighting Acts (45 & 46 Vict. c. 56, 51 & 52 Vict. c. 12, 9 Edw. 7, c. 34, and 9 & 10 Geo. 5, c. 100) which are set out in App. I., *post*, Vol. II., contain important restrictions with regard to the erection of overhead wires: see s. 14 of the Act of 1882, s. 4 of the Act of 1888, and ss. 21 & 22 of the Act of 1919, and the regulations made under these Acts.

The Electricity (Supply) Act, 1919 (9 & 10 Geo. 5, c. 100), s. 21, provides that where the consent of the Board of Trade is obtained to the placing of any electrical line above ground in any case, the consent of the local authority shall not be required, but the Board of Trade before giving their consent shall give the local authority an opportunity of being heard. See the section *in extenso*, *post*.

(2) Nothing contained in this Part of this Act shall limit or interfere with the working of any mines or minerals lying under or adjacent to any street along or across which any posts, wires, tubes, or other apparatus shall be stretched or placed, nor shall the owner, lessee, or occupier of those mines or minerals be liable for any damage which may be occasioned by the working thereof in the ordinary course to such posts, wires, tubes, or apparatus.

As to the right of an owner to work minerals under a street vested in the urban authority, see s. 27 of the Highway Act, 1878, in App. I., *post*, Vol. II. The object of the above provision appears to be to prevent the owners of posts, wires, etc., erected in compliance with the byelaws from acquiring any right thereby against the owner of mines or minerals under the street in or over which the posts, wires, etc., are placed. It may be doubted whether the provision was required.

Section 16.

PART III.

SANITARY AND OTHER PROVISIONS (*a*).

Injurious matters not to pass into sewers.

16.—(1) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured (*b*).

(*a*) This part of the Act may be adopted in its entirety by an urban authority. It can only be adopted by a rural authority to the extent mentioned in s. 50. See also note (*a*) to s. 3.

(*b*) This section is made applicable to rural authorities who have adopted Part III. (see s. 50, *post*, p. 860).

The provisions of the section will apply to the sending of injurious matter into sewers from house drains as well as from factories.

(2) Every person offending against this enactment shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding twenty shillings.

As to the recovery of the penalty, see s. 6. Appeal against a conviction will lie to quarter sessions under s. 7. For the definition of a daily penalty, see s. 11 (3).

Chemical refuse, steam, etc., not to be turned into sewers.

17. (*a*)—(1) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—

(a) Any chemical refuse, or

(b) Any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health (*b*), shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds (*c*).

(*a*) This section is made applicable to rural authorities who have adopted Part III. (see s. 50, *post*, p. 860).

(*b*) See the provisions of the Rivers Pollution Prevention Act, 1876, s. 7, which will be found in App. I., *post*, Vol. II. That section requires facilities to be given for the sending of *liquid* refuse from factories into sewers. No facilities can be required to be given for sending *solid* refuse into sewers, and if any solid refuse is sent into a sewer a remedy may be found in the provisions of s. 16, *supra*. Even if facilities are given for receiving liquid refuse, the text will prevent these being sent into a sewer in the cases above mentioned.

In connection with this subject, reference may be made to *St. Helens Chemical Co.* v. *St. Helens* (*Mayor, etc., of*) (1876), 1 Ex. D. 196; 40 J. P. 471. There the appellants, owners of chemical works, were entitled to discharge refuse by two separate drains into a public sewer. By one drain liquid impregnated with muriatic acid was discharged, and by the other liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices on the appellants:—*Held*, that the escape of the gas was a nuisance within the meaning of 18 & 19 Vict. c. 121, s. 8; that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance. This case shows that it may sometimes be possible to

deal with nuisances in sewers from chemical refuse under the provisions of the P. H. A., 1875, ss. 91—96; but the text gives a remedy which is at once more direct and of wider application. See also the cases referred to in the notes to ss. 15, 21 of the P. H. A., 1875, *ante*, pp. 50, 78. **Note to Section 17.**

(*c*) For the definition of a daily penalty, see s. 11 (3), *ante*, p. 826.

As to the notice which must be given before proceedings are taken under this section, see sub-s. (3), *infra*.

As to the recovery of the penalties, see s. 6. Appeal will lie to quarter sessions against a conviction under s. 7, *ante*, p. 823.

(2) The local authority, by any of their officers either generally or specially authorised in that behalf in writing (*a*), may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises (*b*), may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

(*a*) The authority may be general, *i.e.*, empowering an officer to enter as occasion may arise, or special, *i.e.*, relating to certain premises only. It may be authenticated by the signature of the clerk under the P. H. A., 1875, s. 266, *ante*, p. 593.

(*b*) This notice will be a condition precedent to the obtaining of a justice's order.

(3) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once.

Before a penalty can be proceeded for, the local authority must give notice of the provisions of the section to the offender, and must wait seven days to see if the necessary steps are taken to stop the cause of complaint.

18.—(1) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose. Provision as to local authority making communications with, or altering, etc., drains and sewers.

This section is made applicable to rural authorities who have adopted Part III. (see s. 50, *post*, p. 860).

Section 21 of the Public Health Act, 1875, *ante*, p. 78, provides that an owner or occupier of premises within the district of a local authority shall be entitled to connect his drains with the sewer of such authority upon giving such notice as may be required by the authority, and upon complying with their regulations as to the mode of communication, and subject to the superintendence of their officers. Section 22 entitles the owner or occupier of premises without the district to connect his drains with the sewers in the district upon such terms and conditions as may be agreed upon, or, in case of dispute, may be settled at the option of the owner or occupier by a court of summary jurisdiction, or by arbitration. By the provision in the text, the owner or occupier may require the local authority themselves to make

Note to Section 18.

the communication upon payment of the cost in advance. As to the cost, see the next sub-section.

Sections 21, 22 of the P. H. A., 1875, must now, however, be read in connection with s. 38 of the P. H. A., 1907, if that section has been applied to the district or contributory place by the Order of the L. G. B. or the Ministry of Health.

If the sewer of the authority with which it is proposed to connect a drain cannot be reached without crossing private property, it would appear that the authority have no right to lay the connecting drain without the consent of the owner of such property (see *Wood* v. *Ealing Tenants, Ltd.*, and cases cited therewith on pp. 79, 85, *ante*).

(2) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under fifty pounds, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over fifty pounds have the same determined by arbitration in manner provided by the Public Health Acts.

The estimate is to be made in order to enable the owner or occupier to pay the amount in advance. No provision is made for the case when the actual cost is less or more than the estimated sum; and it is not clear that the owner or occupier in the one case, or the local authority in the other, can recover the difference.

It seems to follow from s. 20 of the S. J. A., 1879, that a case arising under the text must be determined in open court, *i.e.*, by two or more justices sitting in a petty sessional or an occasional court-house.

For the provisions of the P. H. A., 1875, as to arbitration, see ss. 179, 180, *ante*, pp. 425, 426.

(3) A local authority may agree with the owner of any premises that any sewer or drain which such owner is required, or desires, to make, alter, or enlarge, or any part of such sewer or drain, shall be made, altered, or enlarged by the local authority.

The owner of a house which has no sufficient drain for effectual drainage may be required to provide a proper drain under the P. H. A., 1875, s. 23, *ante*, p. 83; by *ibid.*, s. 25, it is unlawful to build or rebuild a house in an urban district or to occupy a house which has been newly built or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the urban authority to be necessary for the effectual drainage of such house; and such drain or drains are to empty into a sewer if there is one within 100 feet, otherwise into a covered cesspool or as the urban authority may direct. In any of these cases the owner may agree with the authority for the execution of the necessary work. It does not appear that an owner may be required to alter or enlarge any drain unless it is insufficient within the meaning of s. 23, or is a nuisance within the meaning of s. 41 or s. 91 of the P. H. A., 1875, *ante*, pp. 105, 165. In any case, however, when the owner desires to make, alter, or enlarge a drain, he may agree with the authority under the provisions contained in the text.

The authority will be in no better position than the owner himself if it becomes necessary to enter the private lands of another person for the purpose of laying a drain (see *Wood* v. *Ealing Tenants, Ltd.*, *ante*, pp. 79, 85). Therefore it behoves an authority to take care in framing an agreement.

Extension of 38 & 39 Vict. c. 55, s. 41.

19. (*a*)—(1) Where two or more houses belonging to different owners are connected with a public sewer by a single private drain (*b*), an application may be made under section forty-one of the Public Health Act, 1875 (relating to complaints as to nuisances from drains) (*b*), and the local authority may recover any expenses incurred by them in

executing any works under the powers conferred on them by that section from the owners of the houses (*c*) in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction. **Section 19.**

(*a*) This section is one of the provisions which become operative in rural districts upon the adoption of Part III. by the rural council (see s. 50, *post*, p. 860).

Several rural councils who (not being desirous that other provisions in Part III. should be applied to their districts, as would be the case if the Part were adopted) have applied to the L. G. B. under s. 5 for powers under s. 19 have not met with success, the view of the Board apparently being that the difficulty of interpreting the section is so great (see notes of cases below) that it is undesirable to issue an order declaring it to be in force in a rural district.

(*b*) Under the P. H. A., 1875, ss. 4, 13, a drain which receives the drainage of two or more buildings is a sewer (see note to s. 4, *ante*, p. 25), and is vested in the local authority, and it is their duty to repair, cleanse, and keep it so as not to be a nuisance or injurious to health (see ss. 15, 19 of that Act). This is still the law with respect to a drain which receives the drainage of two or more buildings belonging to the same owner. When the buildings belong to different owners, the provisions of the text make an important modification in the law.

"Single private drain."

In *Self* v. *Hove Commissioners*, [1895] 1 Q. B. 685; 59 J. P. 103, two houses belonging to different owners were connected with a public sewer by a common pipe. The local authority who had adopted Part III. of this Act, served upon one of the owners a notice under the Act of 1875, addressed to both, requiring them to abate a nuisance arising from the common pipe by doing certain works, and stating that unless the nuisance were abated the authority would proceed to enforce the abatement and recover costs and penalties. The owner upon whom such notice was served accordingly did the works, and brought an action against the authority to recover the cost as money paid at their request. It was held that the notice given by the defendants to the plaintiff was not a request to do the work which would support the action; that no such request could be implied, because the defendants were not themselves compellable to do the work, and under s. 41 of the Act of 1875, and s. 19 of the Act of 1890, could have compelled the owners to do it, and that therefore the defendants were not liable. In *Hill* v. *Hair*, [1895] 1 Q. B. 906; 59 J. P. 374, by a system of drainage established before 1848, a single brick drain on the respondent's premises conveyed the drainage of his house and of other houses belonging to different owners into an adjacent ditch. In 1853 the local authority of the district substituted for the ditch a public sewer, and the brick drain was connected with it. In 1887 a local Act was passed which provided that where two or more houses were connected with a single private drain which conveyed their sewage into a public sewer, the local authority should have all powers conferred by s. 41 of the P. H. A., 1875. The local authority had also adopted Part III. of the Act of 1890. It was held that the brick drain was not a single private drain within the meaning of the local Act or the Act of 1890, because on the passing of the P. H. A., 1848, such drain became and had ever since been a sewer vested in the local authority, and repairable by them, and that, therefore, they were not entitled to exercise against the respondents the powers conferred on them by s. 41 of the Act of 1875.

However, in *Bradford* v. *Mayor, etc. of Eastbourne*, [1896] 2 Q. B. 205; 60 J. P. 501, *Self* v. *Hove Commissioners* was followed, and *Hill* v. *Hair* disapproved. In this case a drain pipe passing through private property had from a date prior to 1890 received the drainage of several houses belonging to different owners before it joined the public sewer. The pipe having become a nuisance, the local authority of the district, who had adopted Part III. of the Act of 1890, gave to the owners of the houses notice under s. 41 of the P. H. A., 1875, to repair it, and on failure of the owners to comply with the notice, executed the necessary work themselves and claimed to recover the expenses incurred. It was held that the pipe in question was a single private drain within the meaning of the text, and that the authority were entitled to recover. This decision was followed in *Seal* v. *Merthyr Tydfil U. D. C.*, [1897] 2 Q. B. 543; 61 J. P. 551.

The above cases were considered in two subsequent appeals heard together, with the result that the decision in *Bradford* v. *Eastbourne Corporation*, *supra*, was approved and the decision in *Hill* v. *Hair*, *supra*, must now be regarded as having been overruled. See *Thompson* v. *Eccles Corporation*; *Haedicke* v. *Friern Barnet U. D. C.*, [1905]

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1 K. B. 110; 69 J. P. 45. The circumstances in the *Eccles Case* were as follows: The appellant was the owner of a block of seven houses built in the year 1875, in accordance with plans approved by the local authority. Adjacent to and in a line with this block and separated therefrom by a private passage giving access to the backs of the houses, were two other blocks of six houses belonging to a second owner. A six-inch pipe passed through and under these twelve houses, and received the drainage from each of them. In continuation of this pipe there was a nine-inch pipe running through and under the cellars of and receiving the drainage from the appellant's houses. The last-mentioned pipe discharged into a main sewer. Both the six-inch and the nine-inch pipes were laid through private property until the main sewer was reached. [See the plan in the report at 69 J. P. 45.] The pipe at a point where it drained the houses belonging to both owners was held to be a "single private drain." In the *Friern Barnet Case* the position with regard to the pipe there in question was undistinguishable, but a second point was decided. It was held that when a nuisance in a single private drain exists only on the property of one owner, the authority may call upon such owner to remedy it under s. 41 of the P. H. A., 1875, and s. 19 of the Act of 1890; and no occasion arises for serving notices, or making an apportionment, upon the other owners under s. 19.

In a later case the Court of Appeal was called upon to decide whether the upper portion of a pipe might be a "sewer" although the lower portion was (according to admissions in the case) a "single private drain." Twelve houses numbered with odd numbers from 51 to 73, were the property of one owner, No. 75 belonging to another person, and Nos. 77 to 81 to a third person. At the rear of these sixteen houses ran a common drain which was connected with the public sewer in front of such houses by a branch drain running at right angles under a passage between the Nos. 73 and 75. Each of the sixteen houses was connected with the common drain by a separate pipe, which conveyed the sewage of such house to the common drain, and thence into the public sewer through the branch drain. The branch drain and the common drain were constructed wholly upon private property. [See the plan in the report at 69 J. P. 225.] It was admitted, or not disputed, that the branch drain into the public sewer was a single private drain, and the question thereupon arose whether that portion of the common drain which ran at the back of the twelve houses all owned by one man, was, down to its junction with the branch drain, also a single private drain. It was held that it was not (*Jackson* v. *Wimbledon U. D. C.*, [1905] 2 K. B. 27; 69 J. P. 225).

In the last-mentioned case it was admitted that the branch drain running into the public sewer was a single private drain; but in a later case the questions arose, first, whether a line of pipes into which sewers emptied themselves was a single private drain, and, secondly, if it was, whether in view of the fact that sewers intervened between such line of pipes and the houses, the houses could be said to be connected with the public sewer *by such single private drain.* A row of houses, of which six belonged to the respondent and the remainder to other owners, were drained by a system of pipes arranged as follows: The houses were drained in pairs; each house was drained by a separate pipe which discharged into a pipe common to both houses, and each "common pipe" discharged into a line of pipes, laid in private ground behind the houses, which conveyed the drainage to a public sewer. [See the plan in the report at 71 J. P. 89.] It was admitted that the "common pipes" through which the drainage of the respondent's houses passed were sewers. It was held by the Divisional Court that the line of pipes laid behind the houses was not a single private drain. The Court of Appeal held that, even assuming it was a single private drain, yet, as the "common pipes" were sewers, the respondent's houses were not connected with the public sewer by such single private drain: see *Wood Green U. D. C.* v. *Joseph*, [1907] 1 K. B. 182; 71 J. P. 89. On appeal ([1908] A. C. 419) it was held by the majority of the law lords that the line of pipes behind the houses was not a single private drain on the ground that s. 19 of the Act of 1890 only relates to conduits which ss. 23 and 25 of the Act of 1875 require the owners of property to provide or see provided; and that on the facts stated in the case it did not appear that the line of pipes in question was one to which s. 23 or s. 25 applied, or one which, irrespective of the definitions of "drain" and "sewer," would have come within the purview of s. 41 of the Act of 1875. The ground of the decision in the Court of Appeal, and apparently that of the Divisional Court also, did not meet with the approval of the majority of the law lords. Lord ASHBOURNE, however, agreed with the decisions below.

Each of six houses belonging to five different owners was connected by a drain to a line of pipes, which ran along the rear of the houses, and then into a public sewer. The line of pipes was laid in private ground by the various owners at their joint cost

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in order to drain all the houses. It was held (under the corresponding Irish section) that it was a "single private drain" (*Holywood U. D. C.* v. *Grainger*, [1912] 2 I. R. 126).

The defendants were the owners of a plot of land within the plaintiffs' urban district abutting upon the H. Road, in which was laid a public sewer. In or about the year 1861 the defendants erected upon this plot of land two rows of cottages, for occupation by their servants, with a road about twenty feet wide between them. The road was a cul-de-sac and formed the only access by road and for vehicles to the back yards of the cottages. The entrance to the road was originally closed by gates, but these were removed between 1865 and 1870 so that any member of the public might use the road, but it had never been repaired, cleansed, or lighted at the public expense. In 1877, in consequence of a requisition by the local authority, the defendants laid a line of pipes in the centre of the road to take the drainage from the cottages, which were connected with it in pairs by means of Y-shaped pipes, into the public sewer in H. Road. The defendants subsequently constructed gullies and pipes whereby the surface water of the cul-de-sac road was conveyed into the line of pipes in question. The plaintiffs, purporting to act under s. 49 of the Kingston-upon-Hull Corporation Act, 1903, and s. 41 of the Public Health Act, 1875, having required the defendants to abate a nuisance in respect of the drainage, cottages and roadway, and having executed the necessary works themselves, claimed a declaration of charge upon the property for the cost of the work in connection with the main line of pipes:—*Held*, that there was not sufficient evidence of dedication to constitute the cul-de-sac a highway, but that, whether that was so or not the line of pipes was a "single private drain" within s. 49, and that the plaintiffs were accordingly entitled to the declaration of charge which they claimed (*Kingston-upon-Hull Corporation* v. *North Eastern Rail. Co.*, [1916] 1 Ch. 31; 80 J. P. 57).

(*c*) See the P. H. A., 1875, s. 41, *ante*, p. 105.

As to the recovery of the expenses, see the next sub-section. No penalty is imposed for non-compliance with a notice under s. 19: see *Lancaster* v. *Barnes U. D. C.*, *infra*. See, however, a dictum of STIRLING, L.J., in *Haedicke* v. *Friern Barnet U. D. C.* at [1905] 1 K. B. 124.

The section applies to every case where the fact that a single private drain is in bad condition or requires alteration and amendment causes the drain to be a nuisance or injurious to health, even though the alteration or amendment necessary to abate the nuisance may involve an alteration of the structure (*Southwold Corporation* v. *Crowdy* (1903), 67 J. P. 278; 1 L. G. R. 899).

A joint notice under s. 41 of the P. H. A., 1875, may be given to several different owners, and the fact that neither of the owners can relay the part of the drain situate in the other's premises without committing a trespass is no objection to the validity of the notice (*Lancaster* v. *Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405). See also the decision in *Wood Green U. D. C.* v. *Joseph*, *ante*, p. 834, as to the written application to the local authority under s. 41 of the Act of 1875, and the decision in *Haedicke* v. *Friern Barnet U. D. C.*, *ante*, p. 834, as to the necessity for service of notice on all the owners, where the nuisance can be located in the property of one owner.

This section gives a right of appeal from the surveyor to a court of summary jurisdiction.

Where no proceedings are taken under s. 41 of the P. H. A., 1875, this section does not affect the general obligation of the local authority under s. 15 of that Act to keep in repair all sewers belonging to them, including a sewer which may be treated as a single private drain for the purposes of the text (*R.* v. *Mayor, etc. of Hastings*, [1897] 1 Q. B. 46; 60 J. P. 759).

The effect of s. 19 is that "a sewer may still be vested in the local authority for all the purposes which are expressed in s. 13 and the following sections of the Act of 1875, and yet the private owner may for the purposes of abating a nuisance be under the obligations which are imposed upon him by s. 19 of the Act of 1890 and s. 41 of the Act of 1875": *per* WARRINGTON, J., in *Pemsel and Wilson* v. *Tucker*, [1907] 2 Ch. 191; 71 J. P. 547.

(2) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly.

It may be doubted whether this express provision was necessary, having regard to the concluding words of s. 41 of the P. H. A., 1875.

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Private improvement expenses are recoverable by improvement rates under ss. 213—215, 232, of the P. H. A., 1875, *ante*, pp. 493—496, 520; and see also s. 257, *ante*, p. 568. As to appeal, see s. 7, *ante*, p. 823, and notes thereto.

(3) For the purposes of this section the expression "drain" includes a drain used for the drainage of more than one building.

This sub-section does not affect the definition of a "drain," except for the limited purposes of this section. For all other purposes, the private drain would be a "sewer" within the definition in the P. H. A., 1875, s. 4: see *per* WRIGHT, J., in *R.* v. *Mayor, etc. of Hastings*, *ante*, p. 835, and see *per* WARRINGTON, J., in *Pemsel and Wilson* v. *Tucker*, *ante*, p. 835.

Sanitary conveniences for public accommodation.

20.—(1) Where an urban authority (*a*) provide and maintain for public accommodation any sanitary conveniences (*b*), such authority may—

(i) Make regulations (*c*) with respect to the management thereof and make byelaws (*d*) as to the decent conduct of persons using the same;

(ii) Let the same from time to time for any term not exceeding three years at such rent and subject to such conditions as they may think fit (*e*);

(iii) Charge such fees for the use of any water-closets provided by them as they may think proper.

(*a*) This section applies only to urban authorities. Its powers may, however, be obtained by a rural council, in conjunction (so far as sub-s. (1) is concerned) with those of the P. H. A., 1875, s. 39, by order of the M. of H. See notes to that section, and to ss. 3 and 5, *ante*, pp. 104, 808, 811. See also the provisions of the P. H. A., 1907, s. 47, *post*, p. 1049.

(*b*) "Sanitary conveniences" are defined by s. 11 (3), *ante*, p. 826, to include urinals, water-closets, earth-closets, privies, ashpits, and any similar conveniences. An urban authority may provide and maintain these for public accommodation, under the P. H. A., 1875, s. 39, *ante*, p. 102, and under *ibid.*, s. 45, *ante*, p. 115, they may provide receptacles for the temporary deposit and collection of dust, ashes, and rubbish. As to the extended meaning of "ashpit," see s. 11 (1), *ante*, p. 825. To these conveniences the provisions in the text will apply.

(*c*) Regulations are made under the P. H. A., 1875. s. 188, *ante*, p. 446, and require no confirmation.

(*d*) Byelaws are made in manner provided by s. 9, *ante*, p. 824, and must be confirmed by the Ministry of Health.

(*e*) This seems to imply that the use of the conveniences, or any of them, may be charged for by the lessee, though the urban authority seem only to have power themselves to charge for the use of water-closets.

By the P. H. A., 1907, other powers in this behalf are conferred on local authorities if s. 47 of that Act is declared by the Ministry of Health to be in force. That section, after enacting that "the local authority may provide and maintain . . . sanitary conveniences . . . and lavatories . . . and may employ and pay attendants and make reasonable charges for the use of any sanitary conveniences (other than a urinal) or of any lavatory so provided," empowers an authority to make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same, and also empowers an authority to let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper. It will be observed that the section extends to lavatories, which are not expressly mentioned in the definition clause (s. 11 (3)) of the Act of 1890, but it gives no power to make *regulations*: it gives, however, express power to charge in respect of any sanitary convenience other than a urinal or any lavatory.

(2) No public sanitary convenience shall, after the adoption of this Part of this Act, be erected in or accessible from any street without the consent in writing of the urban authority, who may give such consent upon such terms as to the use thereof or the removal thereof at any time, if required by the urban authority, as they may think fit.

A sanitary convenience could never be erected in a street vested in the authority without their consent (see the P. H. A., 1875, s. 149, *ante*, p. 273), unless it was entirely subterranean: see *Mayor, etc. of Tunbridge Wells* v. *Baird*, *ante*, p. 104. Nor could consent be given to the erection of such a convenience either wholly or partly above ground so as to be an obstruction. Now, however, the authority adopting this Part of the Act may permit the erection of a public convenience wholly or partly above ground in any street (including private streets; see note to s. 11 (3), *ante*, p. 826) or on private property, but accessible from any street, although it may cause an obstruction in the street. The authority may give or withhold their consent altogether or upon terms.

An appeal to quarter sessions will lie under s. 7, *ante*, p. 823, by any person aggrieved by the withholding of consent under this section.

Reference may be made to *Wellstead* v. *Paddington Vestry* (1891), 66 L. T. 194; 40 W. R. 254, decided with reference to a local Act in the metropolis.

See also the P. H. A., 1907, s. 43, in the note to sub-s. (4).

(3) Any person who erects a sanitary convenience in contravention of this enactment, and after a notice in writing to that effect from the urban authority does not remove the same, shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding twenty shillings.

As to the definition of "daily penalty," see s. 11 (3), *ante*, p. 826.

As to the recovery of the penalty, see s. 6. Appeal against a conviction will lie to quarter sessions under s. 7, *ante*, p. 823.

See also the P. H. A., 1907, s. 43, in note to sub-s. (4).

(4) Nothing in this section shall extend to any sanitary convenience now or hereafter to be erected by any railway company within their railway station yard or the approaches thereto.

By the P. H. A., 1907, s. 43, *post* (if declared by the L. G. B. (now M. of H.) to be in force in any district, and subject to such conditions or adaptations as may be specified in the Order of the Board): "(1) If any urinal or other sanitary convenience opening on any street (whether erected before or after the commencement of this section) is so placed or constructed as to be a nuisance or offensive to public decency, the local authority, by notice in writing, may require the owner to remove it within a reasonable time fixed by the local authority. (2) If the owner fails to comply with the notice, be shall be liable to a penalty not exceeding twenty shillings and to a daily penalty not exceeding ten shillings" This section contains no saving in favour of railway companies.

Sanitary conveniences used in common.

21. (*a*) With respect to any sanitary convenience (*b*) used in common by the occupiers of two or more separate dwelling-houses (*c*), or by other persons, the following provisions shall have effect:

(1) If any person injures or improperly fouls any such sanitary convenience, or anything used in connexion therewith, he shall for every such offence be liable to a penalty not exceeding ten shillings (*d*):

(*a*) This section is applicable to rural authorities who adopt Part III. (see s. 50, *post*, p. 860).

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(*b*) For the definition of a "sanitary convenience," see s. 11 (3), *ante*, p. 826.

(*c*) It should be remembered that the P. H. A., 1875, does not require a separate water-closet, earth-closet, or privy for every individual house (*Clutton Union (Guardians of)* v. *Pointing* (1879), 4 Q. B. D. 340; 43 J. P. 686).

(*d*) As to the recovery of this penalty, see s. 6. Appeal lies against conviction to quarter sessions under s. 7, *ante*, p. 823.

(2) If any sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof is or are in the opinion of the urban authority or of the inspector of nuisances or medical officer of health of such authority in such a state or condition as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as aforesaid as may be in default, or in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a penalty not exceeding ten shillings, and to a daily penalty not exceeding five shillings.

See the notes to the preceding sub-section.

For the definition of a "daily penalty," see s. 11 (3), *ante*, p. 826.

Sanitary conveniences for manufactories, etc.

22. (*a*)—(1) Every building, used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business, whether erected before or after the adoption of this Part of this Act in any district, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences (*b*), having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed, or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

(*a*) Where this section is in force neither s. 38 of the P. H. A., 1875 (*ante*, p. 101), nor s. 9 of the Factory and Workshop Act, 1901 (in App. I., *post*, Vol. II.), applies (see sub-s. (4), *infra*, and sub-s. (4) of s. 9). The section cannot be adopted by a rural council.

The Factory and Workshop Act, 1901, s. 5 (in App. I., *post*, Vol. II.), applies to the cases provided for by this section, so that it is the duty of a factory inspector on a deficiency of accommodation in a factory being brought to his attention to give notice of it to the district council. If the council fail to take proceedings within one month, the factory inspector may himself take proceedings and give a notice under sub-s. (2) of this section, and prosecute for penalties in case of default under sub-s. (3). On such prosecution, the justices cannot question the validity of the requirements of the notice (*Tracey* v. *Pretty*, [1901] 1 Q. B. 444; 65 J. P. 196); and the expenses of any successful proceedings so far as not recovered from any other person are recoverable from the council.

It will be seen that under the Act of 1901 the initiative is left to the Inspector of Factories. Some sanitary authorities consider this to be unsatisfactory and prefer to take powers themselves under the Act of 1890.

As to conveniences in coal mines, see p. 101, *ante*.

(*b*) The term "sanitary convenience" includes urinals, water-closets, earth-closets, privies, ashpits, and any similar conveniences (s. 11 (3)). For the extended meaning of "ashpit," see s. 11 (1), *ante*, p. 825. There is no recognised standard for the proportion of sanitary conveniences to number of persons employed, but in London and all the principal towns one to every twenty or thirty is the proportion usually observed. It will be observed that this section only applies to buildings, not to all work-places: see *Bennett* v. *Harding*, *ante*, p. 171, and the P. H. (London) A., 1891, s. 38.

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(2) Where it appears to an urban authority on the report of their surveyor (*a*) that the provisions of this section are not complied with in the case of any building, the urban authority may, if they think fit, by written notice (*b*), require the owner or occupier of any such building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as aforesaid.

(*a*) The report of the surveyor is a condition precedent to proceedings under this section. See a form of report in the Encyclopædia of Forms and Precedents, Vol. X., at p. 509. The surveyor must be the fit and proper person duly appointed to be surveyor under the P. H. A., 1875, s. 189, not a person performing the duties of the surveyor *pro tem.*: see *Lewis* v. *Weston-super-Mare L. B.* (1888), 40 Ch. D. 55. The decision in this case was distinguished by KEKEWICH, J., in *Kendal* v. *Lewisham Borough Council* (1903), 67 J. P. 236; 1 L. G. R. 416, where he held that an order made under the Metropolis Management Act, 1855, s. 105, is valid if made by a surveyor of the council for the time being, on the ground that in s. 105 the expression is "surveyor for the time being"; an appeal was settled (1903), 20 T. L. R. 21.

(*b*) This notice may be authenticated by the signature of the clerk or surveyor (see the P. H. A., 1875, s. 266, *ante*, p. 593). The notice should specify the alterations and additions which the urban authority require to be made (*per* Lord ALVERSTONE, C.J., in *Tracey* v. *Pretty*, [1901] 1 Q. B. 444). See a form of notice in the Encyclopædia of Forms and Precedents, Vol. X., p. 510. Appeal against the requirements of the notice lies to quarter sessions under s. 7, *ante*, p. 823.

(3) Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding forty shillings.

As to the recovery of this penalty, see s. 6. On proceedings for penalties, the validity of the requirements of the notice cannot be questioned by the justices (*Tracey* v. *Pretty*, [1901] 1 Q. B. 444; 65 J. P. 196). Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

For the definition of "daily penalty," see s. 11 (3), *ante*, p. 826.

(4) Where this section is in force, section thirty-eight of the Public Health Act, 1875, shall be repealed.

See the provisions of the section referred to, *ante*, p. 101; and see the Factory and Workshop Act, 1901, ss. 5, 9, in App. I., *post*, Vol. II., referred to on p. 838, *ante*.

Extension of 38 & 39 Vict. c. 55, s. 157.

23. (*a*)—(1) Section one hundred and fifty-seven of the Public Health Act, 1875 (*b*), shall be extended so as to empower every urban authority to make byelaws with respect to the following matters; that is to say:

The keeping water-closets supplied with sufficient water for flushing (*c*);

The structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation (*d*);

The paving of yards and open spaces in connection with dwelling-houses (*e*); and

The provision in connexion with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters (*f*).

Building byelaws.

(*a*) Urban authorities acquire all the powers of this section when they adopt Part III. The position of rural authorities is more involved, but it would seem that by the adoption of Part III. to the extent permissible to rural authorities (see ss. 3 and 50) such an authority acquires the powers of sub-s. (1) of s. 23 except as to matters not mentioned in sub-s. (3), and also certain powers under sub-ss. (2) and (4)

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and under ss. 157 and 158 of the P. H. A., 1875. An order of the Ministry of Health, however, under s. 5 of this Act (which is frequently preferred to an "adoption") may relate to *any* of the powers of the Act, and to the district as a whole or to certain parishes. See also notes to ss. 3 and 5 and to sub-s. (3) below.

(*b*) See s. 157 of the P. H. A., 1875, and the notes thereto, *ante*, p. 327; and as to the making of byelaws, see s. 9, *ante*, p. 824.

(*c*) Where there are no byelaws of this kind in force, the only way in which proper flushing apparatus can be enforced is by proceeding under the P. H. A., 1875, s. 36, on the ground that the water-closet is insufficient (see *Bogle* v. *Sherborne L. B.*, *ante*, p. 98).

(*d*) As to floors partly of steel and partly of timber, for which no special provision is made in the byelaws, see *Towers* v. *Brown* (1903), 2 L. G. R. 942.

Defendants were summoned for infringement of a byelaw that "every person who shall erect a new building, and shall construct any room therein so that it may be used for human habitation . . . if such room is not intended to be used as a sleeping room . . . shall construct such room so that it shall be not less in any part thereof than 9 feet in height." They had constructed cottages, each of which contained a scullery 8 feet 3 inches in height. The sculleries contained only a slopstone and stone bench and no fireplace or flue, and were not of sufficient size for taking meals or sleeping. The justices found that the sculleries were not rooms which might be used for human habitation. It was held that there was no rule of law requiring the justices to find that the sculleries, being without fireplaces, were constructed so that they might be used for human habitation, and that their decision was right (*Bain* v. *Compstall Co-op. Soc.* (1911), 75 J. P. 76; 103 L. T. 759).

(*e*) On the application to any district of the P. H. A., 1907, s. 25, further powers as to the paving, etc. of yards will be obtained. See the section, *post*, p. 1034.

The Ministry of Health will probably not invest a rural district council with powers under this part of s. 23 of the Act of 1890, when powers under s. 25 of the Act of 1907 have been given.

(*f*) A council obtained confirmation by the L. G. B. of a byelaw which ran: "Every person who shall lay out a new street shall provide in connection with such street a secondary means of access of the width of 12 feet at least where necessary." On the question being raised whether the words "where necessary" applied to the width of the street or to the street itself, the Board expressed the opinion that the words must be read as qualifying the provision of a secondary means of access and not the width, so that it would be optional to the council to determine, according to the facts of each case, whether a secondary means of access should be provided.

(2) Any byelaws under that section as above extended with regard to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits, and cesspools, in connexion with buildings, and the keeping water-closets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section.

See note (*a*) on p. 839, *ante*, and note to next sub-section, as to the application of this sub-section to rural authorities.

For the times mentioned in s. 157 see the first proviso, set out *ante*, p. 327. The meaning of the provision in the text is that the byelaws above described may be applied to all buildings already erected, as well as to new buildings: see *Simmons* v. *Malling Rural District Council*, *ante*, p. 348; and *cf. Fulham Vestry* v. *Solomon*, [1896] 1 Q. B. 198; 60 J. P. 72, decided under ss. 39, 40, 41 of the P. H. (London) A., 1891. See also *Agar* v. *Nokes and Nokes* (1905), 69 J. P. 374; 3 L. G. R. 1168, where the expression "reconstructed" (used with reference to a drain) in byelaws under the Metropolis Management Act, 1855, applying to buildings erected before the confirmation thereof, was construed. *Cf.* also as to a plumber's responsibility under such byelaws (*Kershaw* v. *Brooks*, [1909] 2 K. B. 265; 73 J. P. 231).

(3) The provisions of the said section (as amended by this Act), so far as they relate to byelaws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to

the matters mentioned in sub-sections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of water-closets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make byelaws in respect to the said matters, and to provide for the observance of such byelaws, and to enforce the same as if such powers were conferred on the rural authorities by virtue of an Order of the Local Government Board made on the day when this Part of this Act is adopted; and section one hundred and fifty-eight of the Public Health Act, 1875, shall also apply to any such authority, and shall be in force in every rural district where this Part of this Act is adopted. Section 23.

Building byelaws in rural districts.

As regards the effect of sub-s. (3) upon rural authorities it is useful to quote a memorandum prefixed by the Local Government Board to their model byelaws as to buildings in essentially rural localities. The Board state as follows:

"1. The authority to make byelaws for regulating new streets and buildings and matters connected therewith is conferred on urban district councils by section 157 of the Public Health Act, 1875, and section 23 of the Public Health Acts Amendment Act, 1890.

"2. Rural district councils are not directly authorised to make such byelaws, but can obtain power to make some or all of them in the following ways:—

(i) A rural district council can, by adopting Part III. of the Act of 1890, acquire power to make byelaws upon the subject-matters referred to in paragraph 3 below; or

(ii) A rural district council may make application to the Local Government Board to be invested with such of the powers conferred by the sections as they deem suitable to their district, or to any one or more contributory places within it. Such an application can be made whether the council have adopted Part III. of the Act of 1890 or not. The mode of making such an application is dealt with in paragraph 7 below.

"3. The powers obtained under section 23 of the Act of 1890 where Part III. has been adopted, or where the provisions of that section have been put in force by an Order of the Board, enable a rural district council to make byelaws on the following subjects:—

(1) The structure of walls and foundations of new buildings for purposes of health;
(2) The sufficiency of space about buildings to secure a free circulation of air;
(3) The ventilation of buildings;
(4) The drainage of buildings;
(5) Water-closets, earth-closets, privies, ashpits, and cesspools in connection with buildings;
(6) The closing of buildings unfit for human habitation;
(7) The structure of floors;
(8) The height of rooms to be used for human habitation;
(9) The keeping of water-closets supplied with sufficient water for flushing;
(10) The alteration of buildings;
(11) The observance and enforcement of such byelaws by requiring notices and plans.

"4. It has been represented to the Board that it would be useful if a series of model byelaws were framed, dealing only with the subjects which are most in need of regulation and control in a rural district from a sanitary point of view, and omitting the additional requirements usually found in a code of byelaws in force in an urban district. The Board have, therefore, drawn up the accompanying series of model byelaws. They are confined to matters affecting health, and are limited to the subject-matters numbered (1) to (6), (9) and (11) in paragraph 3 above.

"The Board are not in a position to advise as to what byelaws are needed in particular rural districts. The responsibility rests with the rural district council in each instance of determining, on consideration of the circumstances of their district, what byelaws (if any) they will propose to make. The model is intended to serve as a guide to them in dealing with the most important sanitary requirements in connection with

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new buildings. It must not be regarded as excluding the adoption of further provisions, where these are found to be necessary, dealing with the other matters mentioned in section 23 of the Act of 1890, or in section 157 of the Act of 1875. Portions of many rural districts are distinctly urban in character, and the development of building is constantly changing the aspect of the country, and it devolves on rural district councils to endeavour to apply to the several parts of their districts such regulations as the circumstances may, from time to time, seem to require. The present series contains no clauses dealing with questions of stability or the prevention of fire, or with the level, width, and construction of new streets. These are all matters that may properly be regulated in portions of rural districts which are assuming an urban character, and circumstances may arise which may render it necessary to deal with one or more of them even in less closely populated areas. Where more comprehensive byelaws are considered to be necessary for the whole or any part of the district, the rural district council may be referred to the model series prepared for use in urban districts. They should carefully study the clauses and select those that are appropriate to the needs of the district, or the portion of it under consideration. In this connection it may be mentioned that a series of byelaws may be made for part only of a contributory place where the circumstances justify this course. The part should, however, be very clearly defined by a well-recognised boundary line. . . .

"7. If a rural district council desire to obtain urban powers by an Order of the Local Government Board they should pass a resolution authorising an application to be made to the Board under section 276 of the Act of 1875, or section 5 of the Act of 1890, as the case may be, for an order investing them with such powers. The resolution should specify the provisions which it is desired to put in force, and the particular contributory places in respect of which the powers are sought.

"A copy of the resolution should be sent to the Board, together with a brief statement of the grounds upon which the application is made.

"If any such application is made with reference to section 157 of the Act of 1875 it should extend to section 158 of the Act also, unless section 23 (3) of the Act of 1890 is already in force.

"If powers under section 23 of the Act of 1890 are desired the council should consider the desirability of including the powers of sections 25 and 33 of the same Act in the application."

(4) Every local authority may make byelaws to prevent buildings which have been erected in accordance with byelaws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the byelaws.

This sub-section supplies a defect in the previous legislation. By the P. H. A., 1875, s. 159, *ante*, p. 361, a new building is deemed to include the conversion into a dwelling-house of a building not originally constructed for human habitation; and such a conversion brought the building within the byelaws as to new buildings. But there was nothing to prevent the conversion of a dwelling-house into a public building or a building of the warehouse class, although when so used it contravened the byelaws applicable to such buildings. The adoption of this section will remove this defect. See also the P. H. A., 1907, s. 23, *post*.

"The Public Health Acts" as used in s. 23 (4), *supra*, seems to include the statutes consolidated and amended by the P. H. A., 1875.

Rooms over privies, etc., not to be used as dwelling or sleeping rooms.

24.—(1) Where any portion of a room extends immediately over any privy (not being a water-closet or earth-closet), or immediately over any cesspool, midden, or ashpit (*a*), that room, whether built before or after the adoption of this Part of this Act, shall not be occupied as a dwelling-place, sleeping-place, or workroom, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night.

This section can only be put in force in a rural district by an Order of the Ministry of Health under s. 5.

(*a*) See the definition of "ashpit" in s. 11 (1), *ante*, p. 825.

(2) Any person who after the expiration of one month after the adoption of this Part of this Act, and after notice from the local authority of not less than seven days, so occupies, and any person who suffers to be so occupied, any such room, shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding ten shillings.

As to the recovery of this penalty, see s. 6. Appeal against the conviction lies to quarter sessions under s. 7, *ante*, p. 823. For the definition of "daily penalty," see s. 11 (3), *ante*, p. 826.

Penalty or erecting buildings on ground filled up with offensive matter.

25. (*a*)—(1) It shall not be lawful to erect a new building (*b*) on any ground which has been filled up with any matter impregnated with fæcal, animal, or vegetable matter, or upon which any such matter has been deposited unless and until such matter shall have been properly removed by excavation or otherwise, or shall have been rendered or have become innocuous.

(*a*) This section may be adopted by a rural authority with the other provisions mentioned in s. 50, *post*, p. 860. If powers as to building byelaws are sought by order of the Ministry of Health under s. 5 it is desirable that these powers also and those of s. 33 should be included in the application. See notes to s. 23 (3). When in force s. 25 may have a considerable effect on the responsibilities of lessees for waste: see *West Ham Central Charity Board* v. *East London Waterworks*, *ante*, p. 115.

(*b*) An extended meaning is given to this term by the P. H. A., 1875, s. 159, *ante*, p. 361; it includes a building pulled down and rebuilt. And where the P. H. A., 1907, s. 23, has been applied in any district, a still more comprehensive meaning will attach to the term (see that section, p. 1032, *post*).

(2) Every person who does or causes, or wilfully permits to be done, any act in contravention of this section shall for every such offence be liable to a penalty not exceeding five pounds, and a daily penalty not exceeding forty shillings.

For the recovery of this penalty, see s. 6. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823. For the definition of a "daily penalty," see s. 11 (3), *ante*, p. 826.

Power to make byelaws for certain sanitary purposes.

26.—(1) An urban authority (*a*) may make byelaws (*b*) in respect of the following matters, namely:

(a) For prescribing the times for the removal or carriage through the streets of any fæcal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district (*c*):

(b) For providing that the vessel, receptacle, cart, or carriage used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid:

(c) For compelling the cleansing (*d*) of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage.

A doubt formerly existed whether byelaws upon these points could be made and enforced by urban and rural district councils whose districts are situate within the metropolitan police district in consequence of a provision in the Metropolitan Police Act, 1839, which imposed a penalty upon any person who infringed certain stated rules

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as to the emptying of privies, the removal of offensive matter through streets, the use of covered vehicles, and the cleaning of places in which offensive matter may have been spilled. The provision in question was repealed, as regards the county of London, by the Public Health (London) Act, 1891; but otherwise it remained in force till 1906 with the result that until that date there were very few areas within the police district where such byelaws were made. It has now, however, been wholly repealed by the Removal of Offensive Matter Act, 1906, *post*, p. 1017, but in proposing byelaws on the subject for a district adjoining London, it is desirable for the council to have due regard to the byelaws of the London County Council, so that the prescribed hours shall not render impossible or difficult the removal of offensive matter from London into the surrounding districts. The Police Act permitted removal during the hours of darkness, but this is virtually prohibited by the London byelaws, and the L. G. B. have expressed their unwillingness to confirm a byelaw which prescribes hours of darkness for removal on the ground that proper supervision by officers is hardly feasible at such a time, and that offences are more likely to arise.

Complaint having been made of a nuisance caused by the refuse brought from London to certain parts of a rural district the L. G. B. advised that the difficulty might to some extent be met by byelaws, and stated that they had in some cases, where a district council were satisfied that such a requirement would be a reasonable one, assented to an increase of the distance of 100 yards suggested in model clause 8 of the series of byelaws with respect to nuisances. (That clause deals with the deposit of loads of filth within a prescribed distance from streets, dwelling-houses, schools, churches, etc.) The Board at the same time drew attention to the provision in s. 26 (1) of the P. H. A., 1890.

'(*a*) This sub-section, unlike sub-s. (2), cannot be adopted in rural districts (see s. 50, *post*, p. 860); but it may be put in force by Order of the Ministry of Health under s. 5.

The provisions of this sub-section appear to be supplemental to the P. H. A., 1875, s. 44, by which where a local authority do not themselves undertake or contract for the removal of house refuse or the cleansing of earth-closets, privies, ashpits, and cesspools, they may make byelaws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupiers of premises.

(*b*) As to the making of byelaws, see s. 9, *ante*, p. 824.

(*c*) The now repealed provision of the Metropolitan Police Act, 1839, provided that, "every person who, in any street or public place within the limits of the metropolitan police district, shall be guilty of any of the following offences, shall be liable to a penalty . . . (4) Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night . . ." It was held that an offence was committed if a privy on premises near to the road or pathway of a street was emptied within the prohibited hours (*Howard* v. *Daniels* (1905), 69 J. P. 439).

(*d*) A draft byelaw required the use of a deodorant in the case of offensive matter or rubbish spilled in a street. The Board drew attention to the decision in *Barnett* v. *Laskey* (1899), 63 J. P. 5, which shows that the expression "cleansing" as used in s. 26 (1) of the P. H. A., 1890, might, in certain circumstances, be held to include disinfection. No special mention of the use of a deodorant in the byelaw was, therefore, necessary.

(2) Where a local authority themselves undertake or contract for the removal of house refuse they may make byelaws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the local authority undertake or contract for.

This subsection is applied to all districts (whether urban or rural) for which Part III. is adopted. See s. 50, *post*, p. 860.

This provision is supplemental to the P. H. A., 1875, s. 42, *ante*, p. 107, by which every local authority may, and when required by the L. G. B., now the Ministry of Health, shall, themselves undertake or contract for the removal of house refuse from premises. The L. G. B. have expressed the opinion that a district council has power to provide as part of their scavenging plant pails for the reception on premises of night-soil, such pails when full being removed to the depôt and empty pails left on the premises for use until the next collection.

As to the making of byelaws, see s. 9, *ante*, p. 824.

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A byelaw of the London County Council under s. 16 of the Public Health (London) Act, 1891, provided that "Where a sanitary authority arrange for the daily removal of house refuse in their district or any part thereof, the occupier of any premises in such district or part thereof in which any house refuse may from time to time accumulate, shall at such hour of the day as the sanitary authority shall fix and notify by public announcements in the district, deposit on the kerbstone or on the outer edge of the footpath immediately in front of the house, or in a conveniently accessible position on the premises, as the sanitary authority may prescribe by written notice served upon the occupier, a movable receptacle in which shall be placed, for the purposes of removal by or on behalf of the sanitary authority, the house refuse which has accumulated on such premises since the preceding collection by such authority. The sanitary authority shall collect such refuse or cause the same to be collected between the hours of the day as they have fixed and notified by public announcement in their district." A metropolitan borough council, in purported pursuance of such byelaw, issued a public notice requiring the occupiers in a specified portion of the borough to deposit on the kerb or edge of the footpath immediately in front of their respective houses a movable receptacle in which should be placed for the purposes of removal the house refuse. A printed circular was also issued to the occupiers explanatory of the said notice. The occupier of a detached house standing some forty feet from the highway refused to put his house refuse on the kerbstone, but was willing to provide a convenient place on his premises where the house refuse might be placed for removal. The council refused to remove the refuse unless it was placed on the kerbstone. It was held that a general notice such as that issued by the council was not such a prescription of a convenient place as was contemplated by the byelaws; and that, therefore, the council could be convicted of refusing to remove the house refuse without reasonable cause (*Wandsworth Borough Council* v. *Baines*, [1906] 1 K. B. 470; 70 J. P. 124).

A rural district council informed the Ministry of Health that they had experienced difficulty in arranging for the disposal of house refuse on account of the old tins, broken bottles, and other objects which were mixed up with the refuse and which prevented the contractor disposing of the refuse to farmers. They suggested that the Ministry should confirm restrictive byelaws under the P. H. A., 1890, s. 26. The Ministry held, however, following a similar decision of the L. G. B., that the powers of the section would not enable the district council to make byelaws for such a purpose.

Provision for keeping common courts and passages clean.

27.—(1) Where any court, or where any passage leading to the back of several buildings in separate occupations, and not being a highway repairable by the inhabitants at large (*a*), is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the urban authority, the urban authority may, if they think fit, cause to be swept and cleaned such court or passage.

This section can only be put in force in a rural district by Order of the Ministry of Health (see s. 5).

(*a*) As to the meaning of these words, see note (*c*) under the P. H. A., 1875, s. 149, *ante*, p. 274, and note (*c*) under *ibid.*, s. 150, *ante*, p. 291. In determining whether a place is a highway repairable by the inhabitants at large, regard should first be had to the time when dedication took place. Where there was dedication and user before 1836, when the Highway Act, 1835, came into operation, the road or place became *ipso facto* repairable by the parish, *i.e.*, the inhabitants at large. Where, on the other hand, the dedication took place after 1836, no such liability is imposed on the parish unless the formalities prescribed by 5 & 6 Will. 4, c. 50, s. 23, have been observed, or unless the road has come into existence in one or other of the modes mentioned at p. 276, *ante*. See *per* BLACKBURN, J., in *R.* v. *Dukinfield* (1863), 4 B. & S. 158; 27 J. P. 805; *Eyre* v. *New Forest Highway Board* (1892), 56 J. P. 517; *Leigh-on-Sea U. D. C.* v. *King*, [1901] 1 K. B. 747; 65 J. P. 243; *Att.-Gen.* v. *Watford R. D. C.*, [1912] 1 Ch. 417; 76 J. P. 74, and the other cases and statutes referred to at p. 275, *ante*. Where there has been a dedication since 1836 without such formalities there is, except as to a highway which has come into existence in one of the modes mentioned at p. 276, *ante*, no one liable to repair: see *R.* v. *Wilson* (1852), 18 Q. B. 348; 21 L. J. Q. B. 281; *Roberts* v. *Hunt* (1850), 15 Q. B. 17; *Fawcett* v. *York and North Midland Rail. Co.* (1851), 16 Q. B. 610; *Cubitt* v. *Maxse* (1873), L. R. 8 C. P. 704.

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(2) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the passage leads in such shares as may be determined by the surveyor of the urban authority, or (in case of dispute) by a court of summary jurisdiction (*a*), and in default of payment any share so apportioned may be recovered summarily from the occupier on whom it is apportioned (*b*).

(*a*) See the note to similar words in s. 18 (2), *ante*, p. 832.

(*b*) As to the recovery of the expenses, see s. 6. As to appeal against the order for payment, see s. 7, *ante*, p. 823.

Extension of 38 & 39 Vict. c. 55, ss. 116—119.

28.—(1) Sections one hundred and sixteen to one hundred and nineteen of the Public Health Act, 1875 (relating to unsound meat) shall extend and apply to all articles intended for the food of man, sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale within the district of any local authority.

See also upon this subject the Public Health (Regulations as to Food) Act, 1907, *post*, p. 1017, and regulations made thereunder.

This section, with the others mentioned in s. 50, is applied to rural districts for which Part III. has been adopted.

See the sections referred to in the text and the cases cited in the notes thereto, and especially *Hewett* v. *Hattersley*, on p. 225, decided upon words in the London Act very similar to those of this sub-section.

Where the provision in the text is adopted, the provisions of these sections are extended to all articles of food besides those expressly enumerated. Formerly, these sections did not apply to such things as eggs, butter, cheese, etc.

A cow had been killed when dying from inflammation. The appellant, knowing the circumstances, purchased the diseased carcase; and having arranged with a meat salesman carrying on business in a town to consign it to him for sale, deposited it on the salesman's premises for the purpose of sale for the food of man. The meat was seized *at that place* by an inspector of nuisances, and condemned. It was held that as there had been no exposure for sale by the appellant, but only a deposit for purposes of sale upon premises other than his own, he could not be convicted under s. 117, which was not affected by s. 28 (1), *supra* (*Firth* v. *McPhail*, [1905] 2 K. B. 300; 69 J. P. 203).

A person who has sold diseased meat intended for human food cannot be convicted of an offence under s. 117 of the Public Health Act, 1875, as amended by s. 28 of the Public Health Acts Amendment Act, 1890, for having sold it unless he has exposed it for sale. The appellants, without having exposed it for sale, sold a diseased live bullock to a butcher, knowing that he intended to use it for human food. The butcher, having killed the bullock, divided the carcase, less the parts usually severed and removed, into two halves, and hung it up in his slaughter-house. The carcase was there seized by the Medical Officer of Health, and was condemned by a justice of the peace. *Held*, that the appellants could not be convicted of an offence under s. 117 of the Public Health Act, 1875, as amended by s. 28 of the Public Health Acts Amendment Act, 1890, for having sold the bullock, because there had been no exposure for sale by them; and, further, because the article of food which had been seized and condemned was not the article which had been sold by them (*Bothamley* v. *Jolly*, [1915] 3 K. B. 425). "The true view of s. 28," said Lord READING, L.C.J., in that case, "is, in my opinion, that it extends the operation of ss. 116—119 of the Act of 1875, by making these four sections apply to all articles instead of only to the articles enumerated in the Act of 1875; and it also does away with the necessity for a seizure in compliance with s. 116 before there can be a conviction. Except as just stated, s. 28 does not create a new offence under s. 117. The person who commits an offence under this section as amended is still the person who is the owner of the unsound article at the time of the exposure, or in whose possession or on whose premises it is found. The appellants, who had sold the article without exposing it for sale, have, therefore, not committed an offence under these statutes."

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There is an exposure for sale within the meaning of the P. H. A., 1875, s. 117, as extended by the above section, when fish are sent by the vendor to the purchaser under an agreement to sell, and the purchaser, in exercise of his right of acceptance or rejection, under the express or implied terms and conditions of his contract, rejects them, or there otherwise remains anything to be settled before the property in the fish passes to the purchaser. The expression "exposure for sale" includes an exposure for the purpose of completing an agreement to sell previously entered into (*Ollett* v. *Jordan*, [1918] 2 K. B. 41; 82 J. P. 221).

An information was preferred against the secretary of a company for having in his possession, on the premises of the company at Eastbourne, meat deposited for sale and intended for the food of man, which was unfit for human food. The meat was part of a consignment which had been sent to the company from Smithfield Market. The company had nothing to do with sending this meat; it had simply been sent to the company for distribution among the local butchers, according as it should be allocated by the local official agent of the Ministry of Food. The company had to act under the direction of that agent, and were not responsible for his acts, as he had complete control. The meat never became the property of the company, but they collected the purchase-money from the butchers and paid it to the Ministry of Food without deduction, and a fixed commission of 2½ per cent. was paid by the Ministry. *Held*, that the meat had been deposited on the premises of the company within the meaning of the P. H. A., 1875, ss. 116, 117, as extended by this Act (*Ollett* v. *Henry*, [1919] 2 K. B. 88; 83 J. P. 165).

(2) A justice may condemn any such article, and order it to be destroyed or disposed of, as mentioned in section one hundred and seventeen of the Public Health Act, 1875, if satisfied on complaint being made to him that such article is diseased, unsound, unwholesome, or unfit for the food of man although the same has not been seized as mentioned in section one hundred and sixteen of the said Act.

In *Vinter* v. *Hind* (1882), 10 Q. B. D. 63; 47 J. P. 373, a butcher exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food; some days afterwards, at the request of an inspector of nuisances, it was handed over to him, and was condemned by a justice as unfit for the food of man. It was held that, as it was not seized and condemned in manner provided by s. 116, the butcher could not be convicted. If, however, s. 28 is in force, seizure in accordance with s. 116 is no longer a condition precedent to either condemnation or imposition of a penalty under s. 117 (*Salt* v. *Tomlinson*, [1911] 2 K. B. 391; 75 J. P. 398).

29. Licences granted after the adoption of this Part of this Act for the use and occupation of places as slaughter-houses shall be in force for such time or times only, not being less than twelve months, as the urban authority shall think fit to specify in such licences. **Duration of slaughter-house licences.**

This and the two following sections can only be made operative in a rural district by Order of the Ministry of Health under s. 5. Such powers are, of course, only granted in conjunction with those of ss. 169 (second and third paragraphs) and 170 of the P. H. A., 1875. See the notes to those sections as to the practice of the Ministry with regard to urban powers for the regulation of slaughter-houses in rural districts.

Section 169 of the P. H. A., 1875, *ante*, p. 389, provides that for the purpose of enabling an urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses shall be incorporated with that Act. These incorporated provisions are contained in the Act (10 & 11 Vict. c. 34), ss. 125—131, in App. I., *post*, Vol. II. They provide that no new slaughter-house shall be opened or used without a licence from the urban authority. Those slaughter-houses which existed before 1875, and have since been continuously used as such, require only to be registered. It was formerly doubtful whether a licence when granted could be limited in point of time, for if not it could not be revoked except by justices on conviction of the licensee for an offence under s. 129. Where the above provision is in force the doubt will be removed at least with respect to licences granted after the adoption of this Part of the Act. Such licences may in future be granted for a limited time, not less than twelve months. Any limitation of

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the grant to a period of less than twelve months is void, and a licence containing such an attempted limitation must be regarded as extending for the full period of twelve months (*Taylor* v. *Winsford U. D. C.*, [1907] 2 K. B. 396; 71 J. P. 375).

Against the refusal to grant a licence appeal lies to Quarter Sessions under s. 7, *ante*, p. 823. See *R.* v. *Essex JJ.*, *Ex parte Barking U. D. C.*, cited in the note to that section.

Notice of change of occupation of slaughter-house.

30.—(1) Upon any change of occupation of any building within an urban sanitary district registered or licensed for use and used as a slaughter-house, the person thereupon becoming the occupier or joint occupier shall give notice in writing of the change of occupation to the inspector of nuisances.

See note to preceding section.

Until the decision in *Goodwin* v. *Sale*, [1907] 2 K. B. 278; 71 J. P. 303, it was commonly supposed that a slaughter-house licence was granted for certain premises and enured for the benefit of succeeding occupiers: see 10 & 11 Vict. c. 34, s. 126, in App. I., *post*, Vol. II. In that case the facts were as follows: A licence had been granted in 1874 to one S. to slaughter animals on his premises. S. died in 1881, but the premises continued to be used by his widow as a slaughter-house till 1898, and were occasionally so used by her between 1898 and 1906, when they were let to the appellant. It was contended that by virtue of the licence which had been granted to S. under the Towns Improvement Clauses Act, 1847, s. 125, the premises were a new slaughter-house within the meaning of ss. 125 and 126, and remained a licensed slaughter-house, whether continuously used as such or not, and that the licence was not a personal licence to S. only, but enured for the benefit of successive occupiers. It was held that his licence died with him, that on his death the premises ceased to be licensed, and that therefore the appellant had been rightly convicted of using a slaughter-house without a licence. In view of this decision it is difficult, as to licences in existence when it came into operation, to give a meaning to the provision in s. 30 (1), *supra*, requiring notice to be given to the authority of any change in the occupation of any licensed slaughter-house. It may be that since the coming into operation of the Act an authority may licence a place and not simply a person: see *Goodwin* v. *Sale*, *supra*, *per* PHILLIMORE, J. If so, the provisions of the sub-section become intelligible. The registration of existing premises under s. 127 of 10 & 11 Vict. c. 34, enures for the benefit of succeeding occupiers. Any change of occupation must in future be notified to the inspector of nuisances, who is one of the persons mentioned in s. 131 as entitled to enter and inspect slaughter-houses.

(2) A person who fails or neglects to give such notice within one month after the change of occupation occurs shall be liable to a penalty not exceeding five pounds.

As to the recovery of this penalty, see s. 6, *ante*, p. 823. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

(3) Notice of this enactment shall be endorsed on all licences granted after the adoption of this Part of this Act.

It should be noticed, however, that sub-s. (1) applies to all licences, whether granted before or after the adoption of this Part of the Act.

Revocation of licence on conviction for sale of meat unfit for food.

31. If the occupier of any building licensed as aforesaid to be used as a slaughter-house for the killing of animals intended as human food is convicted by a court of summary jurisdiction of selling or exposing for sale, or for having in his possession, or on his premises, the carcase of any animal, or any piece of meat or flesh diseased or unsound, or

unwholesome or unfit for the use of man as food, the court may revoke the licence. Section 31.

See notes to s. 29. The section is not accurately expressed. The occupier of a slaughter-house cannot be convicted of merely having in his possession or on his premises a carcase, or meat, which is diseased, etc., unless it is also deposited for the purpose of sale, or of preparation for sale, and intended for the food of man (see the P. H. A., 1875, s. 117, *ante*, p. 220). The provision seems to be intended to apply to the owner of a slaughter-house who is convicted under s. 117, and perhaps also under the byelaws of a municipal borough, or under a local Act.

Appeal will lie to quarter sessions under s. 7, *ante*, p. 823, against the order of justices revoking a licence under this section.

It should be mentioned that justices have power under 10 & 11 Vict. c. 34, s. 129, to suspend or revoke a licence on conviction for an offence against that Act, or under the byelaws made under s. 128.

32. Any keeper of a common lodging-house who fails to give the notice required by section eighty-four of the Public Health Act, 1875, shall be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding five shillings. Extension of 38 & 39 Vict. c. 55, s. 84.

This section applies to the district of every council (whether urban or rural) who have adopted Part III.

The P. H. A., 1875, s. 84, *ante*, p. 158, provides that the keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health and also to the relieving officer. By s. 86, any keeper of a common lodging-house who fails to give the notices required by that Act *where any person has been confined to his bed* in such house by fever or other infectious disease shall be liable to a penalty not exceeding £5, and in the case of a continuing offence to a further penalty not exceeding 40s. for every day during which the offence continues. Where s. 32, *supra*, is in operation, a penalty will be incurred under s. 84, if the keeper of the lodging-house fails to give notice even when the person suffering from fever, etc. has not been confined to his bed.

As to the definition of a "daily penalty," see s. 11 (3), *ante*, p. 826. As to appeal, see s. 7, p. 823, *ante*.

33.—(1) Where the plan of a building has been, either before or after the adoption of this Part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or byelaw, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings. Buildings described in deposited plans otherwise than as dwelling-houses not to be used as such.

This section applies to the district of every council (whether urban or rural) who have adopted Part III. Together with s. 25, it is desirable that it should be in force in every district in which byelaws are made as to buildings. See note to s. 25.

Byelaws made under s. 23 (4), *ante*, p. 842, may provide for preventing buildings erected for the purpose of warehouses or public buildings being *altered* into dwelling-houses. The text forbids their occupation, though unaltered, by any person other than a caretaker and his family, subject, however, to the proviso contained in the next sub-section.

As to the recovery of the penalty, see s. 6. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823. For the definition of a "daily penalty," see s. 11 (3), *ante*, p. 826.

Plans of a new building describing it otherwise than as a dwelling-house were duly approved by a local authority in 1894. In 1898 plans of alterations to the building described as "revised plans of proposed domestic conversion" were deposited, but were

Note to Section 33.

never either approved or disapproved. The proposed alterations were carried out and the premises were occupied by a person other than a person placed therein to take care thereof. It was held that s. 33, *supra*, had been contravened, although the authority had not within one month signified in writing their approval or disapproval of the plan of the alterations pursuant to s. 158 of the P. H. A., 1875 (*Fulford* v. *Blatchford* (1899), 80 L. T. 637; 19 Cox C. C. 308).

(2) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or byelaw for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house.

The proviso as to air space must be complied with; the authority cannot dispense with it.

The alterations must be made in conformity with any byelaws made under s. 23 (4), *ante*, p. 842. It may be the authority's "opinion" can be reviewed by quarter sessions (see s. 7, *ante*, p. 823).

Hoards to be set up during progress of buildings, etc.

34.—(1) Every person intending to build or take down any building or to alter or repair the outward part of any building in any street or court (*a*), shall—

(a) before beginning the same, unless the urban authority otherwise consent in writing, cause close-boarded hoards or fences to the satisfaction of the urban authority to be put up in order to separate the building from the street or court;

(b) if the urban authority so require, make a convenient covered platform and handrail to serve as a footway for passengers outside of such hoard or fence;

(c) continue such hoard or fence with such platform and handrail as aforesaid standing and in good condition to the satisfaction of the urban authority during such time as they may require:

(d) if required by the urban authority, cause the same to be sufficiently lighted during the night;

(e) remove the same when required by the urban authority (*b*).

This section, not being mentioned in s. 50, can only be put in force in a rural district by an Order of the Ministry of Health under s. 5.

(*a*) For the definition of "street," see *ante*, p. 15. The term "street" includes "court" if it has the meaning assigned to it in the interpretation clause. The use of the latter expression seems to imply that the word "street" is here used in its ordinary popular sense of a road with houses on one or both sides.

(*b*) When the provisions of this section are adopted they are to be in substitution (see sub-s. (3), *infra*) for those of 10 & 11 Vict. c. 34, s. 80, which is incorporated with the P. H. A., 1875, by *ibid.*, s. 160, *ante*, p. 363. The 10 & 11 Vict. c. 34, s. 80, is set out in App. I., *post*, Vol. II. See cases in notes thereto.

See also the P. H. A., 1907, s. 32, *post*, p. 1040, as to the erection of hoards.

As to the applicability of this section to schools, *cf. Higgs and Hill, Ltd.* v. *Stepney Borough Council*, p. 329, *ante*.

(2) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

As to the recovery of these penalties, see s. 6, *ante*, p. 823. Appeal against conviction lies to quarter sessions under s. 7. For the definition of a "daily penalty," see s. 11 (3), *ante*, p. 826. **Note to Section 34.**

(3) Where this Part of this Act is adopted the eightieth section of the Towns Improvement Clauses Act, 1847, shall be repealed, and this section shall be deemed to be substituted therefor.

The 10 & 11 Vict. 34, s. 80, is set out in App. I., *post*, Vol. II.

35.—(1) All vaults, arches, and cellars under any street (*a*), and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal-holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong (*b*). As to repair of cellars under streets.

This section, not being mentioned in s. 50, can only be put in force in a rural district by an Order of the M. of H. under s. 5.

(*a*) For the definition of "street," see *ante*, p. 15.

(*b*) This provision was entirely new. By s. 73 of the 10 & 11 Vict. c. 34, as amended by the P. H. A., 1875, s. 160, when any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier or owner of such vault or cellar, of iron or such other materials and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

In the metropolis, though owners are required by 18 & 19 Vict. c. 120, s. 102, to keep in repair arches, vaults, and cellars under any street, it was held that the vestry, as highway surveyors, were bound to repair the pavement over vaults or cellars (*Hamilton* v. *St. George's, Hanover Square (Vestry of)*) (1873), L. R. 9 Q. B. 42; 38 J. P. 405; and *cf. Laing* v. *Paull and Williamson*, [1912] S. C. 196). Under the provision in the text the owners or occupiers will be liable to repair not only the vaults or cellars and the cellar-heads, gratings, etc., but also the landings, flags, or stones supporting such cellar-heads, etc.

As to the liability of an owner of premises for the negligence of a contractor in regard to the use of a cellar flap, see *Wilson* v. *Hodgson's Kingston Brewery Co., Ltd.* (1916), 80 J. P. 39.

(2) Where any default is made in complying with the provisions of this section, the urban authority may, after twenty-four hours' notice in that behalf (*a*), cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner (*b*).

(*a*) This notice should be authenticated by the signature of the clerk or surveyor (see the P. H. A., 1875, s. 266, *ante*, p. 593).

(*b*) As to the recovery of these expenses, see s. 6, *ante*, p. 823. As to appeal, see s. 7, *ante*, p. 826.

36.—(1) Every building which, after the adoption of this Part of this Act in any urban district, is used (*a*) as a place of public resort (*b*), Means of ingress to and egress from

Section 36. — places of public resort.

shall, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe, and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein (*c*).

This section, not being mentioned in s. 50, can only be put in force in a rural district by an Order of the Ministry of Health under s. 5.

(*a*) This does not mean "first used." The section will apply to all buildings, whenever erected, which may be used as places of public resort after the adoption of this Part of the Act.

(*b*) For the definition of this term, see sub-s. (6), *infra*.

(*c*) It seems to follow from this enactment that it will not be safe to use any building as a place of public resort after the adoption of this section without a previous expression of satisfaction by the urban authority. Appeal to quarter sessions will lie against their refusal of approval or against any requirement made by them. See s. 7, *ante*, p. 823.

The applicants submitted plans for building a cinematograph theatre to an urban authority. The plans complied with the byelaws, but the urban authority disapproved them on the ground that in view of the nature and situation of the proposed building, and of the size of the streets where it was to be erected and of the traffic in those streets, the building would not satisfy the above section. The applicants then obtained a rule for a mandamus to the urban authority to consider the application for their approval of the plans according to law, on the ground that they had no jurisdiction to reject the plans. *Held*, that the rule must be made absolute, as the mere erection of the building apart from its use would not be a contravention of the section, and therefore the urban authority could have no reasonable grounds for believing that the erection would be such a contravention (*R.* v. *Cambridge Corporation* (1922), 86 J. P. 13).

(2) The means of ingress and egress shall during the whole time that such building is used as a place of public resort be kept free and unobstructed to such extent as the urban authority shall require.

This implies that the authority shall consider with reference to every place of public resort whether it is substantially constructed and supplied with means of ingress and egress to their satisfaction. If it is, it may lawfully be used, but subject to the observance of the requirements of the authority as to the keeping of such means of ingress and egress free and unobstructed. Appeal will lie to quarter sessions under s. 7 against any requirement of the authority under the above sub-section.

(3) An officer authorised in writing by the urban authority, and producing his authority if so required, may at all reasonable times enter any such building to see that the provisions of this section are carried into effect.

This authority may be given generally. The resolution conferring the authority should be entered on the minutes, and the authority itself should be authenticated by the signature of the clerk under s. 266 of the P. H. A., 1875, *ante*, p. 593.

(4) Any person who being the occupier or manager, or in the case of a building let for any period less than one year the owner of any building used as aforesaid, uses the same or suffers the same to be used in contravention of this section, or fails to comply with the provisions of this section in respect thereof, shall for every such offence be liable to a penalty not exceeding twenty pounds.

The owner is the person liable where the building is let for short periods of less than a year. As to the recovery of the penalty, see s. 6. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

(5) Where any alteration in the building is required in order to give proper means of ingress or egress, the court may refuse to inflict a penalty for an offence under this section until a reasonable time has been allowed for making such alteration, but the court may make such order as they think fit for the closing, or otherwise, of the building during such time. Section 36.

The court will probably act under this provision where the owner or occupier has not had an opportunity of making the necessary alteration. If the alteration is made the court may dismiss the information without convicting, or inflict a nominal penalty under the Probation of Offenders Act, 1907.

The court may make an order for closing the building, or they may impose conditions as to its use pending the required alterations. Appeal to quarter sessions will lie against this order under s. 7, *ante*, p. 823.

(6) For the purposes of this section the expression " place of public resort " means a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition-room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this Part of this Act.

37.—(1) Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building, and every platform, balcony, or other structure or part thereof let or used or intended to be let or used for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority. Safety of platforms, etc., erected or used on public occasions.

This section, not being mentioned in s. 50, can only be put in force in a rural district by an Order of the Ministry of Health under s. 5.

The section applies to permanent as well as to temporary structures let or used for the accommodation of persons witnessing the show, etc. It will apply apparently to stands on racecourses.

It seems to be implied that a previous expression of satisfaction by the surveyor is not necessary, but it will be prudent in every case to obtain it.

A man who causes a building to be erected for viewing a public exhibition, and admits persons on payment of money to a seat in the building, impliedly undertakes that due care has been exercised in the erection, and that the building is reasonably fit for the purpose; and it is immaterial whether the money is to be appropriated to his own use or not (*Francis* v. *Cockrell* (1870), L. R. 5 Q. B. 501). The principle of this decision was explained and applied in *Maclenan* v. *Segar*, [1917] 2 K. B. 325, and in *Brannigen* v. *Harrington* (1921), 37 T. L. R. 349.

(2) Any person who uses or allows to be used, in contravention of this section, any roof of a building, platform, balcony, or structure not so safely constructed on secured, or who neglects to comply with the

Section 37. provisions of this section in respect thereof, shall be liable to a penalty not exceeding fifty pounds.

It does not appear what are "the provisions of this section in respect thereof." This clause seems to be unnecessary, as the mere user of a roof, etc., which is not safely constructed or secured to the satisfaction of the surveyor, renders the person using it liable to the penalty.

As to the recovery of the penalty, see s. 6. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

Byelaws for prevention of danger from whirligigs, shooting galleries, etc.

38. An urban authority may make byelaws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of firearms in shooting ranges and galleries.

This section, not being mentioned in s. 50, can only be put in force in a rural district by an Order of the Ministry of Health under s. 5. In rural districts it may be possible to deal with steam roundabouts under s. 70 of the Highway Act, 1835: see 41 Sol. J. 754.

As to the making, etc., of these byelaws, see s. 9, *ante*, p. 824. A town council can also deal with these same matters by byelaws under the Municipal Corporations Act, 1882, s. 23: see *Teale* v. *Harris* (1896), 60 J. P. 744. See also as to byelaws under local Acts, *Southend-on-Sea* (*Mayor, etc. of*) v. *Davis* (1900), 16 T. L. R. 167.

The byelaws as to buildings will not apply to erections of the kind mentioned in the section; see *Hall* v. *Smallpiece*, and other cases cited therewith on pp. 342, 343, *ante*, but see now the P. H. A., 1907, s. 27, also there referred to.

A local authority made under the Public Health (Ireland) Act, a byelaw that no person should cause or suffer any whirligig or swing to be set in motion or driven on any land immediately adjoining or abutting upon any street or road within the district unless such whirligig or swing was placed at a distance of not less than twenty yards from any road or street, and separated from any street or road by a wall not less than fourteen inches in thickness and carried up to a height of not less than four feet above the level of the street or road. It was held that the byelaw was unreasonable and void, inasmuch as it required a structure of a permanent character involving large expense to provide against a temporary danger, which could as effectively be provided against by a temporary structure (*Enniscorthy U. D. C.* v. *Field*, [1904] 2 I. R. 518).

Refuges, etc., in streets.

39. An urban authority may from time to time place, maintain, alter, and remove in any street (*a*), being a highway repairable by the inhabitants at large (*b*), such raised paving or places of refuge, with such pillars, rails, or other fences, either permanent or temporary, as they may think fit, for the purpose of protecting passengers and traffic, either along the street or on the footways, from injury, danger, or annoyance, or for the purpose of making the crossing of any street less dangerous to passengers (*c*).

This section can only be put in force in a rural district in pursuance of an Order of the Ministry of Health under s. 5.

(*a*) See the definition of "street," *ante*, p. 15.

(*b*) As to the meaning of these words, see the note to s. 27 (1), *ante*, p. 845.

(*c*) It does not appear that there is any power to erect refuges in streets apart from this provision. The P. H. A., 1875, s. 149, *ante*, p. 273, enables an urban authority to place and keep in repair fences and posts for the safety of foot passengers, but does not contemplate the appropriation of part of the street for a refuge.

As to the liability of a local authority for negligence in omitting to maintain a danger lamp on a refuge, see *Baldock* v. *Westminster City Council* (1919), 88 L. J. K. B. 502; 83 J. P. 98. It should be observed, however, that this case was decided with reference to the Metropolis, where the obligation of a local authority to light the street differs from that arising under the P. H. A., 1875, s. 161, *ante*. The decision may, however, be of general application on the ground that if a local authority choose

to provide a refuge they must take care that it does not create a danger if left without light.

Note to Section 39.

40.—(1) An urban authority may from time to time provide, maintain, and remove in or near any street in their district suitable erections for the use, convenience, and shelter of drivers of hackney carriages, and such other persons as the urban authority may permit to use the same.

Cabmen's shelters.

This section can only be put in force in a rural district in pursuance of an Order of the Ministry of Health under s. 5.

For the definition of a "street," see *ante*, p. 15.

There is nothing in the older Public Health Acts on this subject. Except under the power hereby conferred, a cabmen's shelter placed in a highway would be a nuisance, as being an obstruction of the public way.

For the definition of a "hackney carriage," see 10 & 11 Vict. c. 89, s. 38, and 52 & 53 Vict. c. 14, s. 4, in App. I., *post*, Vol. II.; *Hickman* v. *Birch* (1889), 24 Q. B. D. 172; 54 J. P. 406; *Hawkins* v. *Edwards*, [1901] 2 K. B. 169; 65 J. P. 423.

(2) The urban authority may from time to time make regulations for prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make byelaws for regulating the conduct of persons using the same.

Regulations are made under the P. H. A., 1875, s. 188, *ante*, p. 446; they require no confirmation. As to the making, etc., of byelaws, see s. 9, *ante*, p. 824.

41. Where this Part of this Act is adopted, section one hundred and fifty-two of the Public Health Act, 1875, shall be repealed, and the following provisions shall be substituted in lieu thereof:

Adoption of private streets.

(1) Whenever all or any of the works mentioned in section one hundred and fifty of the Public Health Act, 1875, have been executed in a street or part of a street under that section by an urban authority, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

See form of notice in the Encyclopædia of Forms and Precedents, Vol. XI., p. 85.

In districts where the Private Street Works Act, 1892, has been adopted, the section will not be in force: see *ibid.*, ss. 19, 25, *post*, pp. 886, 888.

In *Att.-Gen.* v. *Bidder* (1881), 47 J. P. 263, it was held that s. 152 was not a complement to s. 150; that in order that an urban authority might declare a street not repairable by the inhabitants at large to be a highway, so that it might become so repairable, it was necessary that all the works specified in s. 152 should, at the time of declaration, have been executed upon the street to the satisfaction of the authority; that the authority had not under s. 152 any discretion as to which of the works therein mentioned they should require to be executed; that their discretion was limited to their being satisfied with the efficiency of each description of work when done; *semble*, also kerbing a road did not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and wooden paving did not come within the meaning of any of the requirements of this section. See now as to this last dictum s. 11 (2), *ante*, p. 825.

Note to Section 41.

This decision frequently prevented an authority from adopting a street, and the provision in the text was intended to obviate such difficulty. If this Part of the Act is adopted, and *any* of the works mentioned in s. 150 (*i.e.*, sewering, levelling, paving, metalling, flagging, channelling, making good, and lighting) have been done *by the authority* under that section, they may declare the street a highway, though some of these works may not have been done. The section does not, however, seem to deal with the case of owners voluntarily or upon notice from the authority carrying out the works required.

Where the P. H. A., 1907, s. 19, has been applied to a district, and the local authority have in pursuance of the provisions of sub-s. (4) been required to proceed under s. 150, they must declare a street to be a highway repairable, etc., as soon as the necessary works have been completed.

As to the practice of the Ministry of Health in declaring urban powers in relation to private streets to be operative in rural districts, see notes to s. 150 of the Act of 1875, and to the Private Street Works Act, 1892.

(2) Provided that no such street shall become a highway so repairable if within one month after such notice has been put up the owner or the majority in number or value of owners of such street by notice in writing to the urban authority object thereto, and in ascertaining such majority joint owners shall be reckoned as one owner.

This sub-section corresponds with the concluding paragraph of the P. H. A., 1875, s. 152, with the substitution of *owners* for *proprietors*. In *Steward* v. *Metropolitan Electric Tramways, Ltd.* (Oct. 23rd, 24th, 25th, 1907), WARRINGTON, J., held that the "owners" referred to are the owners of the soil of the street and not the frontagers (in a case where the latter do not also own the street itself). See form of notice of objection in the Encyclopædia of Forms and Precedents, Vol. XI., p. 86.

Statues and monuments.

42. Any urban authority may from time to time authorise the erection in any street or public place within their district of any statue or monument, and may maintain the same, and any statue or monument erected within their district before the adoption of this Part of this Act, and may remove any statue or monument the erection of which has been authorised by them.

This section can only be put in force in a rural district in pursuance of an Order of the Ministry of Health under s. 5. A number of such orders have recently been issued for the purpose of enabling rural districts councils to authorise the erection of war memorials on highways.

Hitherto it had been more than doubtful whether any statue or monument could lawfully be set up in a public highway. The urban authority are surveyors of highways under the P. H. A., 1875, s. 144, but neither that section nor s. 149 empowered them to put any permanent structure in a highway, thereby obstructing the public right of passage. In *Hildreth* v. *Adamson* (1860), 8 C. B. (N.S.) 587; 25 J. P. 645, the question was raised, but not decided, whether a public fountain might lawfully be erected in a highway. It will be observed that a fountain is not mentioned in the text.

Trees in roads.

43. Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier.

This section can only be put in force in a rural district in pursuance of an Order of the Ministry of Health under s. 5.

Note to Section 43.

Apart from the provisions of this section an urban authority have no power to erect trees in a public highway. The corporation of Lewes were convicted at the Sussex Assizes of causing a nuisance to the highway by planting trees therein ((1886) Times, March 9th). Even now under the above provision the power to plant trees is not absolute; regard must be had to the public right of passage, and to the comfort and convenience of owners and occupiers. If these matters are not duly regarded it is probable that an indictment would lie as formerly. It has been held that an urban authority who under this section causes trees to be planted in a highway and erects guards for the protection of the same, has a duty to take reasonable steps to protect the public from accidents arising therefrom in any abnormal or exceptional circumstances that may occur (*Morrison* v. *Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277).

The adjacent owner may, if the branches overhang his land, cut them off, without notice to the authority, so far as they overhang his land, provided he does not go off his own land to do so (*Lemmon* v. *Webb*, [1895] A. C. 1; 59 J. P. 564). See also *Smith* v. *Giddy*, [1904] 2 K. B. 448, and *Simmons* v. *Saunders* (1914), L. T. Jo., May 9th (county court). As to roots undermining a neighbour's wall, see *Middleton* v. *Humphries* (1913), 47 Ir. L. T. 160.

The urban authority are not liable as highway authority to an action for damages at the suit of a person injured by a branch overhanging a highway which the authority have neglected to cause to be lopped so as to prevent injury and danger to persons lawfully using the highway, for such neglect is a mere non-feasance (*Tregellas* v. *London C. C.* (1897), 14 T. L. R. 55). And where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus company have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the company liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging (*Trinder* v. *G. W. Ry.* (1919), 35 T. L. R. 291).

The Ministry of Health are willing to entertain applications from urban authorities (who have adopted this part of the Act) for sanction to loans for the provision of trees and the necessary guards. The usual term for repayment is ten years.

Parks and pleasure grounds.

44.—(1) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

See s. 164 of the P. H. A., 1875, *ante*, p. 369, and the notes thereto, and ss. 76 and 77 of the P. H. A., 1907. The last-mentioned sections will, however, only apply to districts where they have been put in force by Order of the L. G. B. or the Ministry of Health.

This section can only be put in operation in a rural district in pursuance of an Order of the Ministry of Health under s. 5. The powers must, of course, be combined with those of s. 164 of the P. H. A., 1875, which may be obtained by a rural council by Order under *ibid.*, s. 276. In rural districts, however, the parish councils have similar powers for the provision and maintenance of recreation grounds, so that it is not often necessary for the rural district council to act. See s. 8 (1) (b) and (d) of the L. G. A., 1894.

The fact that charges may be made for the use of the park or pleasure ground under this section does not apparently make it rateable (*Manchester Corporation* v.

Note to Section 44. *Chorlton Union* (1899), 15 T. L. R. 327; *Liverpool Corporation* v. *West Derby Union*, [1908] 2 K. B. 647; 72 J. P. 228).

(2) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make byelaws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.

This provision applies only when there is a lake or water in a public park or pleasure ground provided by the authority. They cannot provide boats, etc. for use on the sea or a river, though they may license the owners and boatmen of boats and vessels under the P. H. A., 1875, s. 172, *ante*, p. 395. Boats provided under this section need not apparently be registered under the Merchant Shipping Act: see *Southport* (*Mayor, etc. of*) v. *Morriss*, [1893] 1 Q. B. 359; 57 J. P. 84.

As to the making, etc. of the byelaws, see s. 9, *ante*, p. 824.

Extension of 38 & 39 Vict. c. 55, s. 164.

45. The powers of an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, to contribute to the support of public walks or pleasure grounds, shall include a power to contribute towards the cost of the laying out, planting, or improvement of any lands provided by any person which have been permanently set apart as public walks or pleasure grounds, and which, whether in the district of the urban authority or not, are so situated as to be conveniently used by the inhabitants of the district, and shall also include a power to contribute towards the purchase by any person of lands so situate and to be so set apart as aforesaid.

This section can only be put in force in a rural district in pursuance of an Order of the Ministry of Health under s. 5.

See the P. H. A., 1875, s. 164, *ante*, p. 369, and the notes thereto, and the last section.

The word "person" includes a body corporate (P. H. A., 1875, s. 4, *ante*, p. 6), and the text, therefore, enables an authority to contribute towards the purchase, laying out, and support of public walks, etc., provided by an adjoining authority.

Extension of 38 & 39 Vict. c. 55, s. 165.

46. Section one hundred and sixty-five of the Public Health Act, 1875, shall be extended so as to enable any urban authority to pay the reasonable cost of the repairing, maintaining, winding up, and lighting any public clock within their district although the same be not vested in them.

The P. H. A., 1875, s. 165, p. 375, *ante*, enables an urban authority to provide public clocks, and to cause them to be lighted at night. The text enables them to maintain public clocks, such as those on churches, etc., though they did not provide them, and though such clocks are not their property.

Restriction on throwing cinders, etc., into streams.

47.—(1) It shall not be lawful for any person to throw or place or suffer to be thrown or placed into or in any river, stream, or watercourse within any district in which this Part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance.

This section may be adopted by a rural district council with the other provisions set out in s. 50, *post*, p. 860.

Note to Section 47.

When adopted it operates as an extension of the provisions of the Rivers Pollution Prevention Act, 1876 (in App. I., *post*, Vol. II.), under which the throwing of cinders, etc., into a stream so as to interfere with its due flow, or to pollute it, is an offence. The text affords a more direct remedy by summary proceedings than proceedings in the county court under the Act of 1876. As to the powers of county councils with respect to the pollution of streams, see the L. G. A., 1888, s. 14, *ante*, p. 749.

(2) Every person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every such offence.

As to the recovery of this penalty, see s. 6. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

48. So much of section three hundred and six of the Public Health Act, 1875, as imposes penalties on persons who destroy, pull down, injure, or deface any board on which any byelaw, notice, or other matter is inscribed, shall apply to persons who destroy, pull down, injure, or deface any advertisement, placard, bill, or notice put up by or under the direction of a local authority.

Extension of 38 & 39 Vict. c. 55, s. 306.

This section may be adopted by a rural district council with the other provisions set out in s. 50, *infra*.

By the P. H. A., 1875, s. 306, *ante*, p. 640, any person who destroys, pulls down, injures, or defaces any board on which any byelaw, notice, or other matter is inscribed, shall, if the same was put up by authority of the L. G. B. or the Ministry of Health, or of the local authority, be liable for every such offence to a penalty not exceeding £5. The text extends this section to bills, posters, etc. wherever posted, and whether the board on which they may be placed is destroyed, etc. or not.

49. The Local Government Board may by Order on the application of any rural authority declare any expenses incurred by such authority to be special expenses within the meaning of sections two hundred and twenty-nine and two hundred and thirty of the Public Health Act, 1875.

Power to determine expenses of rural authorities to be special expenses.

This section may be adopted by a rural authority with the other provisions set out in the next section; indeed, it is not applicable to an urban authority. Application to the Ministry of Health under the section cannot be made before it has come into force. If a rural authority require the powers of this section alone, they should apply to the Board for an Order under s. 5.

By the P. H. A., 1875, s. 229, *ante*, p. 510, general expenses are the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection (see also 53 & 54 Vict. c. 34, s. 20, *ante*, p. 818), the providing conveyance for infected persons, and all other expenses not determined by the Act or by Order of the L. G. B. to be special expenses. Special expenses are the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under the Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by Order of the L. G. B. (now the Ministry of Health) to be special expenses. Section 230 provides for the raising of general and special expenses.

The text appears to enable the Ministry to declare expenses to be special expenses though they may be general expenses by such a provision as s. 229.

The position is not quite so clear with regard to the power of the Ministry under the present section to declare chargeable as special expenses any which are expressly

Note to Section 49.

declared to be general expenses by *later* enactments: see, especially, the L. G. A., 1894, s. 29 (a), which states that highway expenses shall be defrayed as general expenses. The Ministry appear to take the view that their powers under s. 49 of the Act of 1890 are unlimited, but in the matter of highway expenses they are now seldom disposed to issue an order which will practically infringe the principle laid down by the Act of 1894.

Application of Part III. of Act in rural districts.

50. The following provisions of this Part of this Act shall be applicable in rural sanitary districts, namely,—

Section sixteen, relating to injurious matter being passed into sewers.

Section seventeen, relating to the turning of chemical refuse, steam, etc., into sewers.

Section eighteen, relating to local authorities making communication with drains, etc.

Section nineteen, relating to the extension of section forty-one of the Public Health Act, 1875.

Section twenty-one, relating to sanitary conveniences used in common.

So much of section twenty-three, relating to the extension of section one hundred and fifty-seven of the Public Health Act, 1875, as applies to rural authorities.

Section twenty-five, relating to the penalty for erecting buildings on ground filled up with offensive matter.

Sub-section (2) of section twenty-six, relating to the power to make byelaws for certain sanitary purposes.

Section twenty-eight, relating to the extension of sections one hundred and sixteen to one hundred and nineteen inclusive of the Public Health Act, 1875.

Section thirty-two, relating to the extension of section eighty-four of the Public Health Act, 1875.

Section thirty-three, relating to the use of buildings described in deposited plans otherwise than dwelling-houses.

Section forty-seven, relating to the restriction on throwing cinders, etc. into streams.

Section forty-eight, relating to the extension of section three hundred and six of the Public Health Act, 1875.

Section forty-nine, relating to the powers of the Local Government Board to determine expenses of rural authorities to be special expenses.

As an alternative to adoption a rural authority may obtain the powers of particular sections by Order under s. 5: see notes to that section and also to s. 3.

PART IV.

MUSIC AND DANCING.

Music and dancing licences.

51. For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect (namely):

A rural authority can only obtain these powers by means of an Order of the Ministry of Health under s. 5. Any application for such an Order should be made by resolution of the council, a copy of which should be forwarded with a statement of the grounds upon which the application is based. The Ministry will probably require to know the

Note to Section 51.

names and situation of the establishments which will come under the section if it is made operative, and whether complaints have been made respecting them. A local inquiry has been directed in some cases. An application may also be made by a county council, a parish council, or by ratepayers: see the P. H. A., 1875, s. 276, s. 5 of this Act, and the L. G. A., 1894, s. 25 (7).

When this Part of the Act is adopted by an urban authority, the resolution of the authority must be sent to the Ministry of Health and to a Secretary of State: see s. 3 (5), *ante*, p. 821.

In many towns local Acts in *pari materia* are in force.

As to Army and Navy recreation rooms, see the Army Act, 1889, s. 7.

Other statutory provisions.

The section does not apply (see sub-s. (12)) in or within 20 miles of the cities of London or Westminster, in which area the provisions on the point are—(i) in the administrative county of Middlesex, the Music and Dancing Licences (Middlesex) Act, 1894; and (ii) in other parts of the area the Disorderly Houses Act, 1751, as amended by the Public Entertainments Act, 1875.

The provisions of the Middlesex Act, *supra*, are almost the same as those of this section except that the county council and not the justices are the licensing authority.

Decisions under Disorderly Houses Act, 1751, etc.

The Disorderly Houses Act, 1751, s. 2, provides that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof (repealed by the Middlesex Act, *supra*, as regards the administrative county of Middlesex), without a licence had for that purpose from the preceding Michaelmas quarter sessions of the peace (now the London County Council) (L. G. A., 1888, s. 3) shall be deemed a disorderly house or place. See also, *ibid.*, s. 4, and the amending Public Entertainments Act, 1875 (as to hours of opening), both also repealed as to Middlesex. See, too, s. 3 of the Baths and Washhouses Act, 1899, in App. I., *post*, Vol. II., by which in places where the Disorderly Houses Act, 1751, is in force, a licence under that Act for music or dancing, or for both purposes, may be granted to commissioners appointed under the Baths and Washhouses Acts, 1846 to 1899, or any other body for the time being acting in the execution of those Acts, at any annual licensing meeting of the council authorised to grant such a licence, or any other meeting of such council duly convened with fourteen days' previous notice.

The following cases have been decided with reference to the Act of 1751: It extends to houses kept for the purpose of comparatively private dancing, not only to perfectly public places (*Clarke* v. *Searle* (1793), 1 Esp. 25); but a room kept by a dancing master for the instruction of his scholars and subscribers, and to which persons are not indiscriminately admitted, is not within it (*Bellis* v. *Burghall* (1799), 2 Esp. 722).

A room in which musical performances are regularly given, though it is not kept or used solely for that purpose, is within the statute, and requires a licence (*Bellis* v. *Beale* (1797), 2 Esp. 592).

The statute extends to licensed taverns and hotels, and it is no defence that the company frequenting the performance was respectable or that the admission money was not received for the benefit of the keeper of the house (*Green* v. *Botheroyd* (1828), 3 C. & P. 471). But a temporary use of a room in a publichouse for the purpose of dancing on a particular festival or occasion does not subject the owner to a penalty (*Shutt* v. *Lewis* (1804), 5 Esp. 128; 8 R. R. 840).

To subject a party to penalties for keeping a house for illegal dancing and music, it is not necessary that he should take money for admission (*Archer* v. *Willingrice* (1802), 4 Esp. 186). Where a room above the bar of a publichouse was used for music and dancing, the keeper of the house was held liable for not having a licence, though the persons using the room paid nothing to him for it (*Frailing* v. *Messenger* (1867), 31 J. P. 423; 16 L. T. 497). A room used for public music or dancing is within the statute, although it is not exclusively used for those purposes, and although no money is taken for admission; but the mere accidental or occasional use of a room for either or both of these purposes will not be within the statute (*Gregory* v. *Tuffs* (1833), 6 C. & P. 271; 1 M. & Rob. 313; *Gregory* v. *Tavernor* (1833), 6 C. & P. 280).

In an action to recover the penalty for keeping an unlicensed house for public dancing, it appeared that music, dancing, etc., had occasionally taken place at the defendant's publichouse, and that no money was taken by him for admission, but the rooms were let to persons who sold tickets and received money for admission at the door; but there was no direct evidence that the defendant knew of this practice:—*Held*, that there was evidence to go to the jury of a keeping of the house by the defendant for the purposes mentioned, and that the judge was wrong in directing a non-suit (*Marks* v. *Benjamin* (1839), 5 M. & W. 565; 3 Jur. 1194).

Note to Section 51.

No action can be maintained on an agreement to exhibit entertainment for gain in a place where, by the statute, a licence cannot be obtained (*Levy* v. *Yates* (1838), 8 A. & E. 129; 3 N. & P. 249).

A room kept for public dancing or music without a licence is a disorderly house under the Act, though no disorderly or improper conduct is allowed. The preamble does not confine the section to "places of entertainment for the lower sort of people," where robberies are likely to ensue. A defendant indicted for keeping such house must prove his licence (*R.* v. *Wolfe* (1849), 13 J. P. 428).

A. kept a room which was used as a supper-room and place of general refreshment, there being at the end of it a raised platform, on which stood a piano, and where songs were constantly sung. Programmes of the performance were laid about in different parts of the room. The company was respectable, and no money was paid for admission, nor any extra charge made for the articles consumed there. An action having been brought for a penalty under the Act, the judge asked the jury whether the room was used for the purpose of supplying refreshments in the manner of an hotel, the music and singing being incidental merely, or whether it was used principally for musical performances; and ultimately he directed them to consider whether the room was used for both purposes, in which latter case the informer would be entitled to the verdict. The jury said that the room was used for the purpose of an hotel, and found a verdict for A.:—*Held*, that although the verdict might be against the evidence, there was no misdirection (*Hall* v. *Green* (1853), 9 Ex. 247; 23 L. J. M. C. 15).

Under similar words in a local Act it was held that to bring a case within the statute the music and dancing must be an essential part of the entertainment, and not merely accessories to it. It is not necessary that the dancing should be by the public (*Quaglieni* v. *Matthews* (1865), 6 B. & S. 474; 29 J. P. 439). See also 73 J. P. N. 458 (a gramophone and cinematograph entertainment combined).

A common informer having recovered in an action from the defendant the penalty of £100 for keeping a house without a licence, it was held that only one penalty was recoverable, and that a second action by another common informer to recover a like penalty was not maintainable (*Garrett* v. *Messenger* (1867), L. R. 2 C. P. 583; 31 J. P. 423); but see also *Girdlestone* v. *Brighton Aquarium Co.* (1878), 4 Ex. D. 107; 43 J. P. 428; *Barrett* v. *Johnson* (1836), 2 Jones Ir. Ex. Rep. 197; *Apothecaries Co.* v. *Jones*, [1893] 1 Q. B. 89; 57 J. P. 56.

Under the statute the justices have a discretion to grant a licence for music only; and the keeper of a house with a music licence only is liable to a penalty for keeping a house without a licence if he permits public dancing in the house (*Brown* v. *Nugent* (1872), L. R. 6 Q. B. 693; L. R. 7 Q. B. 588; 36 J. P. 22).

Under similar provisions in a local Act it was held that the justices had an implied right to grant the licence for one year, though no period was mentioned in the statute, and that they were entitled to refuse to renew it (*Hoffmann* v. *Bond* (1875), 32 L. T. 775; 40 J. P. 5). See hereon sub-s. (2).

The defendant kept a skating rink, enclosed by a wall, partly roofed with canvas and partly open to the air. It was open for skating in the daytime and in the evening. In the daytime there was no music. In the evening a band played operatic and dance music while the skaters skated. The defendant had no licence. It was held that he might be properly convicted of keeping a place of public entertainment of a like kind to music and dancing without a licence, and, *semble*, that he might also be convicted of keeping a place for public music without a licence (*R.* v. *Tucker* (1877), 2 Q. B. D. 417; 41 J. P. 294).

C. was lessee of a theatre duly licensed under 6 & 7 Vict. c. 68; he also held a justices' licence under the Act of 1751, and on Ash Wednesday he gave a concert in the theatre, to which the public were admitted for money. Both his licences contained a regulation that no entertainment should be given on Ash Wednesday. It was held that he did not commit an offence against the Act of 1751, as the concert was not a public entertainment *ejusdem generis* with public dancing, and, at all events, the room was not habitually kept for such entertainment (*Syers* v. *Conquest* (1873), 28 L. T. 402; 37 J. P. 342).

D. was convicted under the Theatres Act, 1843, for keeping a place for the public performance of stage plays, and for causing to be acted there certain parts in a stage play without the licence required by that Act. It was proved that he was the occupier of a hall, which, though licensed for public dancing and music, was not licensed as a theatre, and that one end of that hall was fitted up with a stage, where, with lights and scenery and the other accessories of a stage, he caused to be presented for the amusement of the public, for which they paid, a performance sustained by

living persons with a dialogue between them and a regular plot, distinguished only from an ordinary stage play by all the actors except two (the dialogue between whom was wholly subordinate to the plot of the piece) being not bodily on the stage, but represented merely by a reflection of their figures on a mirror at the back of the stage, so ingeniously contrived that to the spectators the appearance was that of persons actually upon the stage:—*Held*, that there had been a violation of the statute, and that the conviction was right (*Day* v. *Simpson* (1865), 18 C. B. (N.S.) 680; 34 L. J. M. C. 149).

Note to Section 51.

A performance in a place duly registered as a place of public worship, in which no music but sacred music is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive and contain nothing hostile to religion, is not an entertainment within the meaning of the Sunday Observance Act, 1780. Therefore, where services were held on a Sunday evening in a registered place, and at such services sacred music was performed by amateur and professional performers, and addresses given, and a small sum charged for reserved seats, it was held that an action could not be maintained against the president of such association under the above Act (*Baxter* v. *Langley* (1868), L. R. 4 C. P. 21; 32 J. P. 805). See for other cases under this Act, *Reid* v. *Wilson*, [1895] 1 Q. B. 315; 59 J. P. 516; *Terry* v. *Brighton Aquarium* (1875), L. R. 10 Q. B. 306; 39 J. P. 519; *Warner* v. *Brighton Aquarium* (1875), L. R. 10 Ex. 291; *Girdlestone* v. *Brighton Aquarium* (1879), 4 Ex. D. 107; 43 J. P. 428. As to remission of penalties, see 38 & 39 Vict. c. 80, s. 1.

1. After the expiration of six months from the adoption of this Part of this Act, a house, room, garden, or other place (*a*), whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind (*b*) without a licence for the purpose or purposes (*c*) for which the same respectively is to be used first obtained from the licensing justices of the licensing district (*d*) in which the house, room, garden, or place is situate, and for the registration thereof a fee of five shillings shall be paid by the person applying therefor (*e*):

(*a*) By the proviso to s. 5 of the Baths and Washhouses Act, 1878, no covered or open swimming bath provided under the Baths and Washhouses Acts when closed during the winter months might be used for music or dancing. But this proviso was repealed as to the county of London by the Baths and Washhouses Act, 1896, and as to places outside that county by the Baths and Washhouses Act, 1899: see as to them that Act, in App. I., *post*, Vol. II.; *Att.-Gen.* v. *Walthamstow U. D. C.*, [1910] 1 Ch. 347; 74 J. P. 147; *Att.-Gen.* v. *Shoreditch Borough Council*, [1915] 2 Ch. 154. "Place."

As to naval and military recreation rooms, see the Army (Annual) Act, 1889, s. 7.

As to what is "a place" within the meaning of the Act, reference may be made to cases under the Betting Act, 1853. B. hired a piece of ground on the cliff near the end of the esplanade at Margate, and permitted certain persons to use a portion of the land for public entertainments, comprising music and dancing. This portion was enclosed partly by ropes and stakes, and partly by chains, no charge for admission being made, but a hat being passed round for donations after each turn, and the performers being accommodated with a tent for dressing purposes. It was held that B. ought to have a licence under this Act (*Farndale* v. *Bainbridge* (1898), Times, January 14th).

(*b*) The landlord of an hotel, by merely permitting his customers on many occasions to sing in one of the public rooms of the hotel, and to use a pianoforte kept there by him, does not thereby keep or use such room for public singing, music, or other public entertainment of the like kind within the meaning of the section (*Brearley* v. *Morley*, [1899] 2 Q. B. 121; 63 J. P. 582). See also *Hall* v. *Green*, *Quaglieni* v. *Matthews*, *R.* v. *Tucker*, on p. 862, *ante*. See also as to what amounts to "keeping or using," *Marks* v. *Benjamin*, *ante*, p. 861; *Martin* v. *Benjamin*, [1907] 1 K. B. 64; 71 J. P. 30; *R.* v. *Belfast JJ.*, [1914] 2 I. R. 181; *Vecsey* v. *Smith* (1917), 86 L. J. K. B. 249; 81 "Keep or use."

Note to Section 51.

J. P. 1. See also as to gramophone music, 72 J. P. N. 160. Whether the dancing, etc. is public or not is a question of fact for the justices. The trustees of a burial society owned a room which, when not required for the purposes of the society, was let by them for balls, etc. It was so let on several occasions to a committee of gentlemen who got up subscription dances, for which they issued invitations to subscribers of one guinea or more, each subscriber of one guinea securing thereby admission for himself and one lady. It was held that a decision of quarter sessions quashing a conviction of the trustees for not having a licence, on the ground that the balls were not public, could not be reversed, it being a question of fact whether the balls were public or not (*Maloney* v. *Lingard* (1898), Times, January 14th).

The "user" or "keeping" must be more or less regular (*Marks* v. *Benjamin*, *Syers* v. *Conquest*, and other cases on pp. 861 *et seq.*).

(*c*) They may grant a licence for one purpose only: see *Brown* v. *Nugent*, *ante*, p. 862. A music and dancing licence does not cover stage plays (*Levy* v. *Yates*, *Day* v. *Simpson*, pp. 862, 863, *ante*), nor does a theatre licence cover music and dancing (*Syers* v. *Conquest*, p. 862, *ante*). But the same room may have both licences.

(*d*) For definitions of "licensing justices," "licensing district," see sub-s. (13).

(*e*) This fee is presumably payable to the clerk of the justices. Under the Middlesex Act (p. 861, *ante*) no fee is payable for a charitable entertainment.

2. Such justices may, under the hands of a majority of them assembled at their general annual licensing meeting or at any adjournment thereof or at any special session convened with fourteen days' previous notice, grant licences to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions as they by the respective licences determine, and every licence shall be in force for one year or for such shorter period as the justices on the grant of the licence shall determine, unless the same shall have been previously revoked as hereinafter provided:

The general annual licensing meeting, at which new licences and renewals of licences for the sale of intoxicating liquor are granted, is held within the first fourteen days of February in every year. The justices must hold at least one adjournment of the meeting, not less than six days and not more than a month after the original meeting: see the Licensing (Consolidation) Act, 1910, s. 10.

The "special session" here mentioned is not a "transfer session" for the transfer of liquor licences. It is an ordinary special session of the justices of the division convened in the usual way. See *R.* v. *Oldham JJ.* (1909), 73 J. P. 390; 101 L. T. 430, as to a slightly different clause in a local Act. As to the notice of the intention to apply for a licence, see sub-s. (4), *infra*.

A licence may be granted for music only, or for dancing only, or as the case may be: see *Brown* v. *Nugent*, *ante*, p. 862. Applications for these licences must be determined judicially. See *R.* v. *London C. C.*, [1892] 1 Q. B. 190; 56 J. P. 8; *Royal Aquarium Society* v. *Parkinson*, [1892] 1 Q. B. 431; 56 J. P. 404.

As to the duration of the licence, see also *Hoffman* v. *Bond*, *ante*, p. 862.

Temporary licences may also be granted by petty sessions under sub-s. (11), *post*, p. 866.

Justices have full discretion in granting or transferring these licences, and the Act gives no appeal against a refusal, for the justices are not a Court of Summary Jurisdiction within the meaning of s. 7, *ante*, p. 823. See *Huish* v. *Liverpool JJ.*, [1914] 1 K. B. 109; 78 J. P. 45.

Conditions attached to licences.

The terms, conditions, and restrictions annexed to a licence may be conveniently indorsed on the licence, and may be printed or written. Apparently a condition that the licensee should not apply for a licence to sell intoxicating liquors would, if imposed under the special circumstances of the case and not in pursuance of any general rule to that effect, be held good: see *R.* v. *West Riding C. C.*, [1896] 2 Q. B. 386; 60 J. P. 550; *Manchester Palace of Varieties, Ltd.* v. *Mayor, etc. of Manchester* (1898), 62 J. P. 425; *R.* v. *Sheerness U. D. C.* (1898), 62 J. P. 563; 14 T. L. R. 533. The holder of a music and dancing licence (as opposed to a theatre licence) cannot obtain a liquor

licence without a justices' licence therefor (*R.* v. *Inland Revenue* (1888), 21 Q. B. D. 569; 52 J. P. 390).

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In granting a music and dancing licence for a hall in connection with licensed premises, the justices imposed a condition that a sum of 3*d.* (at least) should be charged to each person for admission, and should not be refunded in the form of refreshment. It was held that the imposition of such a condition was justified (*Ex parte Richards* (1904), 68 J. P. 536; 20 T. L. R. 669).

See also *London C. C.* v. *Bermondsey Bioscope Co., Ltd.*, [1911] 1 K. B. 445; 75 J. P. 53; *Ellis* v. *North Metropolitan Theatres*, [1915] 2 K. B. 61; 79 J. P. 297, as to imposing a condition against Sunday opening in the case of cinematograph exhibitions. And see also as to conditions imposed on the grant of cinematograph licences: *Halifax Theatre de Luxe* v. *Gledhill*, [1915] 2 K. B. 49; 79 J. P. 238; *R.* v. *London C. C.*, [1915] 2 K. B. 466; 79 J. P. 417; *R.* v. *Burnley JJ.* (1916), 85 L. J. K. B. 1565; 80 J. P. 384; *Slott* v. *Gamble*, [1916] 2 K. B. 504; 80 J. P. 443; *Ellis* v. *Dubowski*, [1921] 3 K. B. 621; 85 J. P. 230.

As to the revocation of a licence, see sub-s. 9, *infra*.

3. Such justices may from time to time at any such special session aforesaid transfer any such licence to such person as they think fit:

As to the "special session," see the note to the preceding sub-section.

As to the notice of intention to transfer, see the next sub-section.

A transfer will be necessary upon each change of occupier, as the licence is a personal one, as well as in respect of the particular premises.

4. Each person shall in each case give fourteen days' notice to the clerk of the licensing justices and to the chief officer of police of the police district in which the house, room, garden, or place is situated, of his intention to apply for any such licence or for the transfer of any such licence:

As to the clerk of the licensing justices and the chief officer of police, see sub-s. 13, *infra*. In the case of renewals notice is not necessary (sub-s. 10, *post*); see also sub-s. 11, *post*, as to licences for short periods.

5. Any house, room, garden, or place kept or used for any of the purposes aforesaid without such licence first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes last aforesaid:

Though the house is to be deemed a disorderly house, it does not appear that the occupier will be liable to indictment for keeping a disorderly house, as a penalty is here provided which will be recoverable as provided by s. 6, with appeal to quarter sessions under s. 7. In this respect the present enactment differs from the 25 Geo. 2, c. 36, s. 2, under which the occupier is liable to a penalty, and to be otherwise punishable as the law directs in cases of disorderly houses. The Middlesex Act (p. 861, *ante*) provides for entry and arrest by constables.

Note, that it is the occupier, and not the person using, who is liable: *cf. R.* v. *Belfast JJ.*, [1914] 2 I. R. 181; and see *Bruce* v. *McManus*, [1915] 3 K. B. 1; 79 J. P. 294.

6. There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters in the words following: "Licensed in pursuance of Act of

Note to Section 51.

Parliament for ," with the addition of words showing the purpose or purposes for which the same is licensed :

The fixing and keeping up of this inscription must be inserted in and made a condition of every licence (sub-s. 8), and a penalty for breach of the condition is imposed by sub-s. 9, *infra*.

7. Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the licence :

The Middlesex Act (p. 861, *ante*) is in different terms. As to a condition not to open on Ash Wednesday, see *Syers* v. *Conquest*, *ante*, p. 862. And as to Sundays, see the Sunday Observance Act, 1780, and *Baxter* v. *Langley* and cases cited therewith on p. 863, *ante*.

8. The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such licence :

As to the penalties for breach of this condition, see the next sub-section.

9. In case of any breach or disregard of any of the terms or conditions upon or subject to which the licence was granted, the holder thereof shall be liable to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding five pounds, and such licence shall be liable to be revoked by the order of a court of summary jurisdiction :

As to the recovery of this penalty, see s. 6. For the definition of a daily penalty, see s. 11 (3), *ante*, p. 826. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 823.

10. No notice need be given under sub-section four of this section when the application is for a renewal of any existing licence held by the applicant for the same premises :

In other words, notice under sub-s. 4 is necessary only on an application for a new licence or for a transfer, and not on application for a mere renewal.

11. The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same a licence to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days which they shall specify in such licence, notwithstanding that no notices shall have been given under sub-section four of this section :

No notice is necessary before such an application is made. The application is to petty sessions for the grant of a licence for a period not exceeding fourteen days.

12. This section shall not apply within twenty miles of the cities of London or Westminster :

Within this area either the Disorderly Houses Act, 1751, or the Music and Dancing Licences (Middlesex) Act, 1894 (see p. 861, *ante*), are in force. See also the Baths and Washhouses Act, 1896.

13. In this section the expressions "licensing justice," "licensing district," and "clerk of the licensing justices" have respectively the same meanings as in the Licensing Acts, 1872—1874 (*a*); the expression "police district" means any area for which a separate police force is maintained; and the expression "chief officer of police" means the chief constable, head constable, or other officer, by whatever name called, having the chief command of such separate police force (*b*). Section 51.

(*a*) See now the Licensing (Consolidation) Act, 1910, ss. 2, 48, for definitions of these terms.

(*b*) A police district may be a county or a borough which has a separate police force.

PART V.

STOCK (*a*).

52.—(1) Where any authority, whether a municipal corporation, local board, or improvement commissioners, which is an urban authority, have for the time being, either in their capacity as urban authority or in any other capacity, any power to borrow money, they may, with the consent of the Local Government Board, exercise such power by the creation of stock to be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations as the Local Government Board may from time to time prescribe. Issue of stock.

(*a*) This Part of the Act cannot be adopted by a rural authority.

Notice of the resolution adopting this Part of the Act must be sent to the Ministry of Health (see s. 3 (5), *ante*, p. 821).

By the Metropolis Water Act, 1902, the provisions of this section were, subject to the provisions of that Act, applied to water stock issued thereunder.

A person acting innocently and without negligence delivered to a municipal corporation a forged transfer of stock requesting them to register him as the transferee thereof. The corporation acting bona fide and without negligence registered the transfer, but subsequently had to make good the loss to the true owner of the stock whose signature was forged. It was held that there was an implied contract that the person at whose request the forged transfer was registered would make good to the corporation the loss sustained by them (*Sheffield Corporation* v. *Barclay*, [1905] A. C. 392; 69 J. P. 385).

As to the meaning of the term stock "redeemable at the option of" the council at a certain date, see *Edinburgh Corporation* v. *British Linen Bank*, [1913] A. C. 133.

(2) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or the County Council of London, or by the corporation of any municipal borough.

Note to Section 52.

For the Local Loans Act, 1875, and amending Acts, see App. I., *post*. Under these Acts loans must be raised by (1) terminable annuities, (2) debentures, or (3) debenture stock. Where this part of the Act is adopted, local stock may be created with the consent of the Ministry of Health, and subject to their regulations.

As to stamp duties, the Finance Act, 1899, s. 8, provides as follows:—"(1) Where any local authority, corporation, company, or body of persons formed or established in the United Kingdom propose to issue any loan capital, they shall, before the issue thereof, deliver to the Commissioners [of Inland Revenue] a statement of the amount proposed to be secured by the issue. [As to the date of issue, see *Att.-Gen.* v. *Liverpool Corporation*, [1902] 1 K. B. 411; 66 J. P. 391.]

"(2) Subject to the provisions of this section every such statement shall be charged with an ad valorem stamp duty of two shillings and sixpence for every hundred pounds and any fraction of a hundred pounds over any multiple of a hundred pounds of the amount proposed to be secured by the issue, and the amount of the duty shall be a debt due to her Majesty.

"(3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.

"(4) If any local authority, corporation, company, or body of persons neglect to deliver a statement, or fail to pay the duty in compliance with this section, that local authority, corporation, company, or body of persons, shall be liable to pay to her Majesty, in addition to the duty, a sum equal to ten per cent. upon the amount of the duty, and a like sum for every month after the first month during which the neglect or failure continues.

"(5) In this section the expression 'loan capital' means any debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, or any capital raised by any local authority, corporation, company, or body of persons formed or established in the United Kingdom, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any county council or municipal corporation bills repayable not later than twelve months from their date or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months, and the expression 'local authority' includes any county council, municipal corporation, district council, dock trustees, harbour trustees, or other local body by whatever name called."

The above section has now been amended by the Finance Act, 1907, s. 10; sub-s. (1) provides that where it is shown to the satisfaction of the Commissioners of Inland Revenue that the loan capital issued by any local authority, in respect of which a statement has after the commencement of the Act been delivered to the Commissioners under s. 8 of the Finance Act, 1899, has been wholly or partly applied for the purpose of the conversion or consolidation of then existing loan capital, that authority shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of 2s. for every £100 of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital. These provisions are not to apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued. Sub-section (2) empowers the Commissioners, if it is represented to them by any local authority that loan capital about to be issued by the authority is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, to postpone the time for the delivery of the statement and the payment of duty under s. 8 of the Finance Act, 1899, until the capital has been issued or until such other time as the Commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction.

(3) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with, the same shall be of no effect, without prejudice nevertheless to the making of further regulations.

(4) If no such resolution is passed, it shall be lawful for her Majesty

by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act. Section 52.

The regulations at present in force were confirmed by Order in Council dated September 26th, 1891 (see Stat. R. & O., 1891, p. 609), and amended by regulations confirmed by Orders in Council dated August 3rd, 1897 (see Stat. R. & O., 1897, p. 80), August 8th, 1901 (Stat. R. & O., 1901, p. 65), April 5th, 1902 (Stat. R. & O., 1902, p. 61), and August 10th, 1921 (Stat. R. & O., 1921, p. 169).

As to income tax on dividends, see *Lord Advocate* v. *Edinburgh Magistrates* (1905), 7 F. 972; *London C. C.* v. *Att.-Gen.*, [1901] A. C. 26; 65 J. P. 227; *Att.-Gen.* v. *London C. C.*, [1907] A. C. 131; 71 J. P. 217; *Sugden* v. *Leeds Corporation*, [1914] A. C. 483; 77 J. P. 225.

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 Vict. c. 70.)

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.
[18th August 1890.]

[In view of the possibility of a Bill for the consolidation of the Housing Acts being introduced and passed into law in the present Session of Parliament (1922) it has been thought advisable to take out of Vol. I. this Act and also the Housing of the Working Classes Acts, 1894, 1900, and 1903; the Housing, Town Planning, etc. Act, 1909; the Housing Act, 1914; the Housing (No. 2) Act, 1914; the Housing, Town Planning, etc. Act, 1919; the Housing (Additional Powers) Act, 1919; and the Housing Act, 1921. These Acts or the Consolidation Act (if any) which replaces them will be inserted in Vol. II.]

THE ALLOTMENTS RATING EXEMPTION ACT, 1891.

(54 & 55 Vict. c. 33.)

An Act to amend the Laws relating to the Rating of Allotments for sanitary purposes. [21st July 1891.]

Whereas it is enacted by section two hundred and eleven, sub-section (1) (*b*), *and section two hundred and thirty of the Public Health Act*, 1875, *that "the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds," shall be assessed to the general district rate in an urban district or to a separate rate levied in respect of special expenses within the meaning of the said Act in a rural district, in the proportion of one-fourth part only of the net annual value or rateable value of such land:*

And whereas doubts have arisen whether allotments are or are not included among the lands to which the aforesaid exemptions apply:

And whereas it is expedient to remove such doubts, and to render the practice of assessment uniform, and to relieve allotments from all liability

Section 1.

to be assessed for sanitary purposes at a higher rate than other cultivated lands: . . .

Amendment of 38 & 39 Vict. c. 55, s. 211 (1) (b) and s. 230.

1. *From and after the first day of October one thousand eight hundred and ninety-one* section two hundred and eleven, sub-section one (*a*), and section two hundred and thirty (*a*) of the Public Health Act, 1875, shall be read and construed as if the word "allotments" was inserted in each of those sections after the word "woodlands" (*b*): *Provided that nothing in this Act shall apply to any rate made under either of the said sections on or before the first day of October one thousand eight hundred and ninety-one.*

(*a*) See these sections *ante*, pp. 478, 514.

(*b*) This enactment is similar to that contained in the Public Health (Rating of Orchards) Act, 1890, *ante*, p. 805. Its effect is that allotments are rateable at one-fourth only of the net rateable value for the purposes of a general district rate under s. 211, or a separate rate under s. 230 of the P. H. A., 1875.

Definition of "allotment."

2. "Allotment" means any parcel of land of not more than two acres in extent and let as an allotment, and cultivated as a garden or a farm, or partly as a garden and partly as a farm.

Compare the definition of an allotment in 50 & 51 Vict. c. 26, s. 4, in App. I., *post*, Vol. II.

Short title.

3. This Act may be cited as the Allotments Rating Exemption Act, 1891.

THE PRIVATE STREET WORKS ACT, 1892.

(55 & 56 VICT. c. 57.)

An Act to amend the Public Health Acts in relation to Private Street Improvement Expenses. [28th June 1892.]

Short title, construction and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

When this Act is adopted by an urban authority it takes the place of ss. 150—152 of the P. H. A., 1875, and s. 41 of the P. H. A., 1890 (see s. 25, *post*, p. 888). Rural councils can only obtain powers under the Act in pursuance of an Order under s. 4.

As to the Acts comprised under the title "Public Health Acts," see the Short Titles Act, 1896. They include the Acts hereinbefore contained, except the Epidemic and other Diseases Prevention Act, 1883; the Public Health and Local Government Conferences Act, 1885; the Local Government Act, 1888; the Public Bodies Corrupt Practices Act, 1889; the Infectious Disease (Notification) Act, 1889; the Infectious Disease (Prevention) Act, 1890; and the Housing of the Working Classes Act, 1890.

The effect of the provision that the Act shall be construed as one with the Public Health Acts, is that every part of each of them must be construed as if it had been contained in one Act, unless there is some manifest discrepancy making it necessary to hold that the latter Act has to some extent modified something to be found in the earlier ones (*Canada Southern Rail. Co.* v. *International Bridge Co.* (1883), 8 App. Cas. 723; *cf.* also *R.* v. *Palmer* (1784), 1 Leach C. C. 352; *Ex parte Copeland* (1852), 2 De G. M. & G. 914; *Read* v. *Joannon* (1890), 25 Q. B. D. 301; *Willingale* v.

Norris (1908), 72 J. P. 495; *Charing Cross, etc., Electricity Supply Co.* v. *London Hydraulic Co.*, [1913] 3 K. B. 442; [1914] 3 K. B. 783; *Brownlow* v. *Metropolitan Board of Works* (1862), 13 C. B. (N.S.) 768; *London C. C.* v. *Port of London Authority*, [1914] 2 Ch. 362; 30 T. L. R. 406; *R.* v. *Essex JJ.*, [1916] 2 K. B. 406; 80 J. P. 345). Consequently definitions and general provisions —*e.g.*, as to service of notices—contained in those Acts will apply, unless expressly excluded or obviously inappropriate. Note to Section 1.

"England" includes Wales and Berwick-on-Tweed (20 Geo. 2, c. 42, s. 3).

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act. Adoption of Act.

An adoption of the Act would seem to be irrevocable: see also s. 25 and note thereto. As to the mode of adoption, see the next section.

3. The following provisions shall have effect with regard to the adoption of this Act by urban authorities: Adoption of Act by urban authorities.

(1) The adoption shall be by a resolution passed at a meeting of the urban authority; and one calendar month at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given (*a*); or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England.

(*a*) See note to the similar provision in 53 & 54 Vict. c. 34, s. 3, *ante*, p. 808. The only difference is that under the text a month's notice of the meeting must be given. See also 53 & 54 Vict. c. 59, s. 3, *ante*, p. 820. For a form of notice of intention to move the adoption of the Act, see the Encyclopædia of Forms and Precedents, Vol. XI., p. 71. See also forms of notice of meeting and of resolution of adoption, *ibid.*, pp. 72, 73.

(2) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel (*a*) in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month (*b*) after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation this Act shall extend to that district.

Compare the similar provisions in 53 & 54 Vict. c. 34, s. 3; 53 & 54 Vict. c. 59, s. 3. A form of notice of the resolution for publication will be found in Vol. XI. of the Encyclopædia of Forms and Precedents, at p. 73.

(*a*) The churches and chapels above referred to are those of the Established Church only. See cases in note to the P. H. A., 1890, s. 3 (4), *ante*, p. 821.

(*b*) "Month" means "calendar month" (Interpretation Act, 1889, s. 3). If, therefore, the date, fixed by a resolution of adoption for the Act to take effect, is less than one calendar month from the date of the resolution, it will be necessary for proceedings to be begun afresh.

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(3) A copy of the resolution shall be sent to the Local Government Board.

For L. G. B. read now the Ministry of Health.

(4) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

See the note to the similar provision in 53 & 54 Vict. c. 34, s. 3, *ante*, p. 808.

Local Government Board may extend Act to rural districts.

4. The Local Government Board may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875.

See the note to s. 3 (3), *supra*.

Compare the provisions in 53 & 54 Vict. c. 59, s. 5, *ante*, p. 822.

For the P. H. A., 1875, s. 276, see p. 613, *ante*. The practice of the Ministry of Health in conferring the powers of this Act upon rural authorities is very similar to that under the P. H. A., 1875, ss. 150, 152, and 276. See particularly the notes to the first of these sections, *ante*, p. 287. In view, however, of s. 20 of the present Act, the Ministry do not require a formal undertaking by the rural authority to take over the streets referred to in the Order as highways repairable by the inhabitants at large when the works have been executed. See also notes to ss. 9 and 25.

A rural district council may apply for powers under this Act in respect of certain streets and for those under the P. H. A., 1875, in respect of other streets.

An Order of the Ministry of Health under this section is not conclusive as to a street named in it being in fact "a street" (*Fenwick* v. *Croydon Rural Sanitary Authority*, *ante*, p. 288), nor as to it being within the contributory place dealt with by the Order (*R.* v. *Cheshire JJ.* (1909), 73 J. P. 499; 101 L. T. 683).

Forms for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XI., at pp. 72—74.

Interpretation.

5. In this Act, if not inconsistent with the context—

The expression "urban authority" means an urban sanitary authority under the Public Health Acts (*a*).

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts (*b*), and "district" means the district of an urban sanitary authority or of a rural sanitary authority, as the case may require.

The expressions "surveyor" (*c*), "lands" (*d*), "premises" (*d*), "owner" (*e*), "drain" (*f*), "sewer" (*g*), have respectively the same meaning as in the Public Health Acts.

The expression "street" means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large (*h*).

Words referring to "paving, metalling, and flagging" shall be construed as including macadamising, asphalting, gravelling, kerbing, and every method of making a carriageway or footway (*i*). Section 5.

(*a*) See the definition of an urban sanitary authority, *ante*, p. 37.

(*b*) See *ante*, p. 37.

(*c*) "Surveyor" is defined, *ante*, p. 7.

(*d*) "Lands" and "premises" are defined, *ante*, p. 7.

(*e*) "Owner" is defined, *ante*, p. 8.

(*f*) "Drain" is defined, *ante*, p. 24.

(*g*) "Sewer" is defined, *ante*, p. 26.

(*h*) See the definition of a street in the P. H. A., 1875, s. 4, *ante*, p. 15. As to the additional words "not being a highway repairable by the inhabitants at large," see *Rishton* v. *Mayor, etc. of Haslingden*, [1898] 1 Q. B. 294; 62 J. P. 85; *Leigh-on-Sea U. D. C.* v. *King*, [1901] 1 Q. B. 747; 65 J. P. 243; *Cababé* v. *Walton-on-Thames U. D. C.*, p. 275, *ante*; *Folkestone Corporation* v. *Brockman*, p. 276, *ante*; and notes on pp. 274, 291, *ante*.

See *Vyner* v. *Wirral R. D. C.* (1909), 7 L. G. R. 628; 73 J. P. 242, as to the admissibility of old maps upon the question of age and (consequently) "repairability": *Mercer* v. *Denne*, [1905] 2 Ch. 538; *Trafford* v. *St. Faith's R. D. C.* (1910), 74 J. P. 497; see also *Att.-Gen.* v. *Horner*, [1913] 2 Ch. 140; 77 J. P. 257; *Fowke* v. *Berington*, [1914] 2 Ch. 308.

The street, or that part of it which is to be dealt with, must be within the authority's district. Where the premises on one side of a street are in another district, no expenses can be apportioned upon them (*Hornsey Borough Council* v. *Birkbeck Freehold Land Society*, [1906] 1 K. B. 521; 70 J. P. 140; *Alderson* v. *Bishop Auckland U. D. C.* (1912), 76 J. P. 347; 10 L. G. R. 722; *Shoreditch Borough Council* v. *Wakeham* (1905), 69 J. P. 239. See also note (*a*) to the P. H. A., 1875, s. 150). Similarly, if in a rural district part of a street is in an adjoining contributory place in which the Act has not been put into force, no apportionment can be made on premises in that contributory place (*R.* v. *Cheshire JJ.*, p. 872, *ante*).

(*i*) This provision meets the decision in *Att.-Gen.* v. *Bidder* (1881), 47 J. P. 263, *ante*, p. 825. The text resembles the P. H. A., 1890, s. 11 (2), *ante*, p. 825.

6.—(1) Where any street (*a*) or part of a street (*b*) is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority (*c*), the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street (*d*). Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street (*e*). Private street works.

A procedure, appropriate in the case of streets which are not ripe for complete making up, is available under the P. H. A., 1907, s. 19, where that section has been declared to be in force in the district. See the terms of that section and notes thereto at p. 1029, *post*. It will be seen that, unless a majority of the owners in a street act under sub-s. (4) of the section in question, it will be open to an authority to do urgent repairs to a private street from time to time without proceeding under either s. 150 of the Act of 1875 or this Act; and, so long as such repairs only are executed, the authority cannot be called upon to take over the street.

(*a*) See the definition in the preceding section.

(*b*) See note to the similar words in the P. H. A., 1875, s. 150, *ante*, p. 294: see

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Standring v. *Bexhill Corporation* (1909), 73 J. P. 241, for an instance of a street the centre of which was repairable by a tramway company.

(*c*) As to what is included in the terms "paved, metalled, flagged," see s. 5, *supra*. As to what is included in the term "channelled," and as to the liability of a local authority in respect of a plate or cover placed over the channel in the course of work done under the Act, see *Jones* v. *Rew* (1910), 79 L. J. K. B. 1030; 74 J. P. 321. See also *Horridge* v. *Makinson* (1915), 79 J. P. 484, *ante*, p. 263.

As to when a street has been sewered, etc. to the satisfaction of the urban authority, see *Bonella* v. *Twickenham L. B.*, and later cases cited therewith at pp. 294—296, *ante*.

(*d*) As to what are premises "fronting, adjoining, or abutting on a street," see the notes on p. 298, *ante*. The words "subject as in this Act mentioned," refer to s. 10, *post*, p. 880, which enables the authority to resolve that in settling the apportionment certain matters other than mere frontage shall be taken into consideration.

It has been held that all premises in the street must be included in the provisional apportionment, although some of such premises are *extra commercium*, and therefore have no "owners" within the meaning of the statute (*Herne Bay U. D. C.* v. *Payne*, [1907] 2 K. B. 130; 71 J. P. 282).

(*e*) This was a new provision.

A form of resolution for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XI., at p. 74.

(2) The surveyor shall prepare, as respects each street or part of a street (*a*)—

(a) A specification of the private street works referred to in the resolution, with plans and sections (if applicable);

(b) An estimate (*b*) of the probable expenses of the works;

(c) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act (*c*).

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit (*d*).

(*a*) The original resolution may include several streets or parts of streets, but the surveyor must deal with each separately in making his specification, etc.

(*b*) The estimate may include a percentage allowance for "contingencies" (*Standring* v. *Bexhill Corporation*, *supra*).

(*c*) As to the manner in which the provisional apportionment is to be made, see s. 10, *post*, p. 880. See form of provisional apportionment in the Encyclopædia of Forms and Precedents, Vol. XI., p. 76.

(*d*) This is a second resolution, quite different from that mentioned in sub-s. (1). See form in the Encyclopædia of Forms and Precedents, Vol. XI., p. 77. It must be published in the manner provided by the next sub-section. The specifications, etc. are not required to be published, but only the resolution, which should, therefore, clearly identify the specifications, etc. to which it refers.

(3) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act (*a*), and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication (*b*). During one month (*c*) from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the

urban authority offices, and shall be open to inspection at all reasonable times (*d*). Section 6.

(*a*) *I.e.*, by advertisement in a local paper once in each of two successive weeks, and by posting copies in or near the street once at least in each of three successive weeks. See the Schedule and notes thereto, *post*, p. 889. See form of notice of resolution in the Encyclopædia of Forms and Precedents, Vol. XI., p. 77.

(*b*) As the Act does not provide for the service of the notices, they may be served in manner provided by the P. H. A., 1875, s. 267, *ante*, p. 593, and may be authenticated in manner provided by *ibid.*, s. 266, *ante*, p. 593. The sub-section requires service on the "owner," not "reputed owner"; therefore, service on a person shown in the apportionment as "owner or reputed owner" is not sufficient if he be not in fact owner (*Wirral R. D. C.* v. *Carter*, [1903] 1 K. B. 646; 67 J. P. 31).

(*c*) "Month" means calendar month (52 & 53 Vict. c. 63, s. 3).

(*d*) Reasonable times would probably be held equivalent to usual office hours.

From the fact that the urban authority has resolved under this section to approve a provisional apportionment including premises which do not abut on the street but access to which is obtained from the street through a court, passage, etc. (as to which see s. 10, *post*), it must be presumed that they think fit to do so, but strictly speaking the resolution of approval should say so expressly (*Oakley* v. *Merthyr Tydfil Corporation*, [1922] 1 K. B. 409; 86 J. P. 1).

7. During the said month any owner of any premises (*a*) shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the urban authority (*b*), object to the proposals of the urban authority on any of the following grounds: (that is to say,) Objections to proposed works.

(a) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act (*c*);

(b) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large (*d*);

(c) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate;

(d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive (*e*):

(e) That any premises ought to be excluded from or inserted in the provisional apportionment (*f*);

(f) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises (*g*).

For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common.

(*a*) The expressions "owner" and "premises" are defined, *ante*, pp. 8, 7. If a mistake has been made as to who is the owner, the real owner can object under this section, although his name is not shown in the provisional apportionment.

(*b*) There is no duty on the part of a frontager to inspect the plans, so as to cast on him any liability for the leaving of a dangerous hole in the street consequent on the raising of the level of the street as shown in the plans (*Horridge* v. *Makinson* (1915), 84

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L. J. K. B. 1294; 79 J. P. 484). No mode of service is prescribed. Presumably a notice addressed to the authority, and left at their office during business hours, will be sufficient. See form of notice of objection in the Encyclopædia of Forms and Precedents, Vol. XI., p. 78.

Certain frontagers addressed a memorial to a corporation stating that they had no desire to have the road taken over by the authority and that the proposed works were unreasonable and unnecessary, and asking that before any further steps were taken to carry out the works, an inquiry should be held upon the point. It was held that such a memorial was not an "objection" within the meaning of this section (*Southampton Corporation* v. *Lord* (1903), 67 J. P. 189).

No objection which might be raised under the Act can be subsequently taken in any court, proceeding, or manner whatsoever (s. 8 (2)). See as to this, *Wallasey U. D. C.* v. *Walker*, and *Porthcawl U. D. C.* v. *Brogden*, *post*, p. 877; *Hayles* v. *Sandown U. D. C.*, [1903] 1 K. B. 169; 67 J. P. 177, where it was alleged that there had been a departure from the specifications; and *Teddington U. D. C.* v. *Vile* (1906), 70 J. P. 381; 4 L. G. R. 782, where a frontager failed to object at the proper time that a sewer had already been laid in front of her house by the former owner under an agreement with the authority.

"Not a street."

(*c*) In consequence of the very wide definition of "street" in the P. H. A., 1875, s. 4, p. 15, *ante*, objection is seldom taken that the place in question is not a "street" as therein defined. See, however, *Bell* v. *Great Crosby U. D. C.* (1913), 77 J. P. 37, for a dispute as to whether a strip of ground in front of a house formed part of an admitted "street" or was purely private property. But the definition of a street in this Act (s. 5, *ante*) adds the words "not being a highway repairable by the inhabitants at large," and these words, as used either here or in the corresponding s. 150 of the P. H. A., 1875, have been the subject of much litigation. The decisions will be found in the notes to ss. 149, 150, *ante*, pp. 274, 291. Under the Act of 1875, the objection that the street is a highway repairable by the inhabitants at large has always been within the cognisance of a court of summary jurisdiction on proceedings taken to enforce payment of the sum apportioned: see the cases cited, *ante*, p. 306. Cases in which the objection has been taken under this Act are referred to in note (*h*) under s. 5, *ante*, p. 373.

The objection "that a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large" is open under the objection that it is not a "street" (*Carey* v. *Bexhill Corporation*, [1904] 1 K. B. 142; 68 J. P. 78).

"Highway repairable," etc.

(*d*) This ground of objection is, as pointed out in the last note, open under an objection under (a). It is to be observed that an owner may object that part of the width of the street is a highway repairable by the inhabitants at large, and the Act is silent as to what is to be done if the objection is made out. Under the P. H. A., 1875, s. 150, the owner would have been liable to pay in respect of the entire street, including the old highway (*Evans* v. *Newport Sanitary Authority*, *ante*, p. 315). In this Act there is no provision to that effect, and it is generally assumed that in such case the court of summary jurisdiction may, under s. 8 (1), *post*, p. 877, amend the resolution, plans, etc. by limiting the scheme to the remaining portion of the street. See on this point *R.* v. *Cheshire JJ.* (1909), 73 J. P. 499; 101 L. T. 683, but note that *Twickenham U. D. C.* v. *Munton*, [1899] 2 Ch. 603; 63 J. P. 23, is not (as might appear from the report) really an authority upon the point; for there the justices excluded not one strip of a street but one length of it.

Where a court of summary jurisdiction have decided upon an objection under this Act that a street is a highway repairable by the inhabitants at large, the matter is *res judicata*, and the authority cannot again raise the point, even on fresh evidence, in other proceedings under the Act in respect of the same length of street (*Wakefield Corporation* v. *Cooke*, [1904] A. C. 31; 68 J. P. 225).

Justices cannot, even by agreement, enforce an apportionment, if the street is a highway repairable by the inhabitants at large. Therefore, an agreement by which an authority "take over" a street, but purport to reserve their rights to do paving work, etc. under the P. H. A., 1875, s. 150, or under this Act, will not enable them to enforce payment under those statutes by summary proceedings (*Folkestone Corporation* v. *Marsh* (1906), 70 J. P. 113; 94 L. T. 511), unless, indeed, a frontager has failed to give notice of objection (see *Folkestone (Mayor of)* v. *Rook*, *ante*, p. 268).

"Insufficient, unreasonable," etc.

(*e*) Under the P. H. A., 1875, s. 150, justices have no jurisdiction to entertain objections of this kind, it being for the authority to determine whether the proposed works are or are not insufficient or unreasonable, subject only to an appeal to the Ministry of Health under s. 268, *ante*, p. 595. The provision in the text virtually

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makes the justices a court of review in respect of matters which are peculiarly within the cognisance of the authority, and this has been strongly urged as a reason for not adopting the Act.

Under this head the objection cannot be taken that the street at one point is too narrow and that nevertheless the authority do not propose to widen it (*Mayor, etc. of Mansfield* v. *Butterworth*, [1898] 2 Q. B. 274; 62 J. P. 500). The ground of this decision was that the expression "insufficient" means insufficient to effect the objects proposed to be effected by the works; and "unreasonable" means unreasonable with reference to the scheme itself. The court can take into consideration the existing state of the drainage in a street proposed to be sewered. Therefore, where houses were drained from the back into a sewer, a magistrate was held justified in finding it unreasonable to provide a sewer in the street in front, except for surface and sink water (*Sheffield* (*Mayor etc., of*) v. *Alexander* (1894), 64 L. J. M. C. 44; 72 L. T. 242).

An authority would not be entitled to provide at the expense of the frontagers a larger sewer than the street requires in order to facilitate the drainage of other parts of the town, but they might construct an unnecessarily large sewer provided they themselves bear the extra cost (*Acton U. D. C.* v. *Watts* (1903), 67 J. P. 400).

Incorrect apportionment.

(*f*) If the apportionment is according to frontage, the objection will usually be that the premises do not "front, adjoin, or abut"; as to which see *ante*, p. 298. Under s. 10, *post*, p. 880, the apportionment may be made having regard to the benefit derived by premises, but an owner cannot object on the ground that this principle should have, but has not, been adopted (*Bridgwater Corporation* v. *Stone*, p. 880, *post*); his proper remedy for that grievance is by appeal to the Ministry of Health under the P. H. A., 1875, s. 268. See 64 J. P. 193. Section 10 also enables premises to be included in a provisional apportionment on the ground of benefit of access, and it would seem that an owner of premises so included may object under this head that they ought to be excluded.

In *Dodworth U. D. C.* v. *Ibbotson* (1903), 67 J. P. 132, an owner objected under this sub-section upon the following facts: In 1878 the authority did some work to the pavement of a private street, and part of the expenses were paid by J. and S., two frontagers. In the following year the authority passed a resolution to the effect that "an indemnity be given to J. and S. on account of further expenses that may be occasioned in connection with Street." In 1902 the authority resolved to make up the street under this Act, and included the premises of J. and S. in the apportionment. The justices ordered the premises to be excluded. This decision was reversed by the Divisional Court, who held that the resolution referred only to expenses to be incurred at the time of, or shortly after, its date. Apparently, too, if the resolution had referred to future expenses for all future time, it would have been held to be *ultra vires* and invalid (*Ibid.*; *Folkestone* (*Mayor, etc. of*) v. *Rook*, *ante*, p. 268). On this latter point, however, *Bromley L. B.* v. *Lansbury* (1894), Times, December 5th, should be considered. In that case a new road was laid out in 1878, and in 1884 the frontagers and the local board agreed that the road should be properly made up and maintained for six months by the frontagers and then adopted by the board. The work was duly done, but the defendants gave no notice of adoption under the P. H. A., 1875, s. 152. It was, however, held in 1894 that the local board were bound by the agreement, and could not require the frontagers to again pave the road under s. 150.

An authority made an apportionment on certain premises, and served notice on the reputed owners. When sued for the amount, the owners for the first time discovered and pleaded that the frontage wall belonged to another person, and that therefore their premises did not abut on the street. It was held that they could not rely upon the point, since their names appeared in the apportionment, and they had been served, as owners of premises abutting upon the street, and they ought therefore to have objected under s. 7 (e) (*Wallasey U. D. C.* v. *Walker & Co.* (1906), 70 J. P. 199).

An objection by a frontager on the ground that by agreement with the urban authority he has been exempted from liability in respect of his property is, if not an objection within the meaning of head (e) of this section, at any rate an objection within the meaning of head (f), and must be raised accordingly. The objection cannot be taken in proceedings to enforce his charge on the property: *Porthcawl U. D. C.* v. *Brogden*, [1917] 1 Ch. 534; 81 J. P. 137.

(*g*) As to this, see s. 10, *post*, p. 880.

Hearing and determination of objections.

8.—(1) The urban authority at any time after the expiration of the said month may apply to a court of summary jurisdiction (*a*) to appoint

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a time for determining the matter of all objections (*b*) made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable (*c*). The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority (*d*). The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given (*e*).

A form of notice of hearing of objections for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XI., p. 79.

(*a*) See the definition, *ante*, p. 36.

(*b*) It appears to be contemplated that the whole of the objections shall be heard together.

(*c*) That is to say, the procedure is to be the same as if the urban authority were complainants and the objectors were summoned for the recovery of the expenses. One result of this is that the burden of proof will be on the urban authority. See hereon *Rishton* v. *Haslingden Corporation*, *ante*, p. 291; *Vyner* v. *Wirral R. D. C.* (1909), 73 J. P. 242, *per* JELF, J.; but see *Folkestone Corporation* v. *Brockman*, [1914] A. C. 338 (*ante*, p. 276), *per* Lord KINNEAR.

An appeal to quarter sessions lies from the justices' decision (*Pearce* v. *Maidenhead Corporation*, *post*, p. 879).

(*d*) The powers conferred on the justices are very wide, and enable them to correct any mistake at any step in the procedure. For instance, if an objection be made out that a length of the street is a highway repairable by the inhabitants at large, the justices may amend the scheme by limiting it to the remainder, and in such case it will not be necessary for the authority before proceeding with the amended scheme to begin proceedings *de novo* or pass a resolution approving the amended scheme (*Twickenham U. D. C.* v. *Munton*, [1899] 2 Ch. 603). The authority may point out, and the justice may correct, any mistake in the apportionment although it has not been challenged by any objection (*Hall* v. *Bolsover U. D. C.* (1909), 73 J. P. 140; 100 L. T. 372).

See as to the creation of an estoppel by the justices' decision, *Wakefield Corporation* v. *Cooke*, *ante*, p. 876.

(*e*) This will as a rule be the proper course to adopt where (*e.g.*) notice has been served on the wrong person under s. 6, or it is intended to add an owner of premises who is suggested to derive benefit from the proposed works. As a matter of pure law, where the justices have decided upon amending the scheme, it is within their discretion whether they will adjourn the hearing and direct further notices to be given; but where the amendment is of a material character, it is desirable, though not obligatory, to do so in order that persons affected by the amendment may have an opportunity of being heard (*Twickenham U. D. C.* v. *Munton*, *supra*).

(2) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

Therefore an owner cannot, when proceedings are taken against him under s. 14, *post*, p. 884, for recovery of the expenses finally apportioned, raise by way of defence any objection which might have been raised and determined in manner provided by this and the preceding section (*Woodford U. D. C.* v. *Henwood* (1899), 64 J. P. 148; see also *Hayles* v. *Sandown U. D. C.*, *ante*, p. 876; *Teddington U. D. C.* v. *Vile*, *ante*, p. 876; *Wallasey U. D. C.* v. *Walker* and *Porthcawl U. D. C.* v. *Brogden*, *ante*, p. 877). It is arguable that this provision takes away the jurisdiction of the Ministry

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of Health under the P. H. A., 1875, s. 268, *ante*, p. 595, so far as relates to any ground of objection which might have been so raised and determined. As to appeals to the Ministry of Health under s. 268 on grounds other than those specified in ss. 7 and 12 of this Act, see *Pearce* v. *Maidenhead Corporation*, [1907] 2 K. B. 96; 71 J. P. 230, explaining *Hayles* v. *Sandown U. D. C.*, *ante*, p. 876.

In connection with appeals to the Ministry of Health, under s. 268 in respect of matters arising under this Act the question arises as to what is the "decision" referred to in s. 268. Upon this depends the question of the time within which an appeal can be made. There is no "notice of demand" (see cases noted under s. 268 of the Act of 1875) under the Private Street Works Act, 1892, and the final apportionment is not necessarily a final settlement of the amount due, for it can be objected to within one month.

It is understood that in the view of the department one month must elapse from the service of the final apportionment and that an owner can then appeal within twenty-one days of the service by the local authority of a valid request or demand for payment.

(3) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.

Under this sub-section the court may order each objector to pay at once his share of the authority's costs, or it may order that the share payable by each shall be added to the expenses for which he may ultimately be liable, and recovered accordingly.

Incidental works.

9.—(1) The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively.

Under the P. H. A., 1875, s. 150, a street dealt with must be regarded as an isolated street, and frontagers cannot be required to make it on a level, etc., with other streets: see *Carey* v. *Kingston-upon-Hull L. B.*, *ante*, p. 296. This provision was evidently inserted with a view to that decision.

The authority may drain the surface water into any natural stream or watercourse provided they observe the restrictions of the P. H. A., 1875, s. 17, *ante*, p. 69. If the watercourse thereby becomes silted up with sand off the surface of the road, the remedy of riparian owners is by proceeding for compensation under s. 308 of that Act (*Durrant* v. *Branksome U. D. C.*, [1897] 2 Ch. 291).

In giving powers to rural councils for the making up, etc., of private streets the Ministry of Health, following the earlier practice of the L. G. B., usually withhold the powers as to sewering at the cost of frontagers. By doing so in the case of orders under s. 4 of this Act, they appear to preclude a rural council from recovering from frontagers the cost of works of surface drainage, for s. 9 recognises a sewer for surface water only as a sewer. See notes to the P. H. A., 1875, s. 150, and s. 4 of this Act.

(2) The urban authority in any estimate of the expenses of private street works may include a commission not exceeding five pounds per centum (in addition to the estimated actual cost) in respect of surveys, superintendence, and notices, and such commission when received shall be carried to the credit of the district fund.

The commission must be entered when received in the separate accounts kept under s. 21, *post*, p. 887; though it will be applied differently from the expenses. It is

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doubtful whether such charges can be recovered under the P. H. A., 1875, s. 150: see *Walthamstow L. B.* v. *Staines*, [1891] 2 Ch. 606; and cases cited therewith at p. 306, *ante*.

Apportionment of expenses.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say,)

(a) The greater or less degree of benefit to be derived by any premises from such works;

(b) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

The apportionment should be made upon each separate house or plot, and different premises belonging to one owner should not be lumped together (*Croydon R. D. C.* v. *Betts*, [1914] W. N. 144; 78 J. P. N. 160; *Pontypridd U. D. C.* v. *Jones*, p. 883, *post*): if subsequently rendered necessary by subdivision of a property, a court could probably divide the apportioned sum (*cf. Sydney Municipal Council* v. *Fleay*, [1911] A. C. 371).

Under the P. H. A., 1875, s. 150, the expenses must be apportioned according to frontage. Under this Act also they are to be so apportioned unless the authority resolve to exercise one or both of the powers here conferred upon them. If they do so resolve, it will be the duty of the surveyor to take the considerations indicated into account in making his apportionment. The apportionment of the surveyor must be approved by the authority under s. 6, and may be objected to under s. 7, *ante*, p. 875.

It is for the authority alone to decide whether to make use of this section; and the justices cannot entertain an objection that they ought to have, but have not, done so (*Bridgwater Corporation* v. *Stone* (1908), 72 J. P. 487; 99 L. T. 806).

A local board resolved to execute certain private street works in a street which had buildings on the north side only, and was bounded on the south side chiefly by land of the local board. The works comprised the making up of the roadway, and the paving and kerbing of a footpath on the north side only, no footpath being made on the south side. By the provisional apportionment the expenses of paving and kerbing the footpath were apportioned amongst the owners of premises abutting on the north side only. All other expenses were apportioned amongst the owners of premises abutting on both sides of the street, including the local board as the owners of land on the south side. It was held that the expenses of the footpath were properly apportionable amongst the owners of premises on both sides of the street (*Clacton-on-Sea L. B.* v. *Young*, [1895] 1 Q. B. 395; 59 J. P. 581).

The latter part of this section introduced a new provision, whereby premises may be made liable to contribute though not abutting on the street: see *Baddeley* v. *Gingell* and *London School Board* v. *Vestry of St. Mary, Islington*, *ante*, p. 300. The conditions are that such premises have access to the street *and* are benefited by the works. The owner of such premises may object under s. 7 (*f*), *ante*, p. 875. If it is decided to bring in premises under the latter part of the section it is not essential but is advisable to state in the resolution approving the provisional apportionment that the authority "think just" to include the premises (*Oakley* v. *Merthyr Tydfil Corporation*, [1922] 1 K. B. 409; 86 J. P. 1).

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As to the meaning of the words "court, passage or otherwise," see *Newquay U. D. C.* v. *Rickeard*, [1911] 2 K. B. 846; 75 J. P. 382: apparently they include anything which gives access to the premises in the same way as a court or passage, but not a public street or a road made for a purpose other than that of giving access to the premises in question (*ibid.*). The appellant's premises did not front or abut on that portion of a street called Grange Lane upon which works were being carried out, but access therefrom to his premises was obtained through the remaining portion of Grange Lane. It was held that the words "court, passage or otherwise" mean a court or passage or something in the nature of a court or passage, but do not mean a portion of the street itself, and that the section did not empower the authority to include the appellant's premises in the provisional apportionment: *Chatterton* v. *Glanford R. D. C.*, [1915] 3 K. B. 707; 79 J. P. 441. The word "passage" in this section means something in the nature of a feeder of the street to be made up, though it need not be the only means of approaching the street (*Oakley* v. *Merthyr Tydfil Corporation*, *ante*, p. 880.

Amendment of plan, etc.

11. The urban authority may from time to time amend the specifications, plans, and sections (if any), estimates, and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the Schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment and, if made, shall be dealt with and determined in like manner as objections to the original estimate and apportionment.

If the amendment does not increase the estimate nothing more need be done; if it does, it will be necessary to proceed de novo, and to advertise and give notices as mentioned in Schedule, Part II. As to objections, see s. 7, *ante*, p. 875.

Final apportionment and recovery of expenses.

12.—(1) When any private street works have been completed and, the expenses therefore ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be), and such final apportionment shall be conclusive for all purposes; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments.

See forms of final apportionment and notice thereof in the Encyclopædia of Forms and Precedents, Vol. XI., pp. 80, 81.

The final apportionment may be objected to in manner provided by the next subsection. Notices may be authenticated in manner provided by the P. H. A., 1875, s. 266, *ante*, p. 593, and served in accordance with *ibid.*, s. 267, *ante*, p. 593.

As to the recovery of sums under this Act, see s. 13, *post*, p. 882, and s. 14, *post*, p. 884.

As to the power to declare expenses payable by instalments, see the P. H. A., 1875, s. 257, *ante*, p. 568.

The combined effect of this Act and s. 257 of the P. H. A., 1875, is that the apportioned amount becomes charged on the premises at the time of completion of the works as from that date (*Surtees* v. *Woodhouse*, [1903] 1 K. B. 396; 67 J. P. 232).

As to the incidence of paving expenses between limited owners and reversioners, landlords and tenants, and vendors and purchasers, see the cases cited on pp. 192—205, *ante*. See also s. 17, *post*, p. 885.

Section 12.

(2) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them :

(a) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.

(b) That the final apportionment has not been made in accordance with this section.

(c) That there has been an unreasonable departure from the specification, plans, and sections.

The Act is silent as to what is to happen if the objector makes good his objection, but in *Hayles* v. *Sandown U. D. C.*, *infra*, Lord ALVERSTONE, C.J., said that the justices might correct the figures and in effect make a fresh apportionment.

A frontager, on proceedings being taken to recover from him his apportioned share of expenses, attempted to establish that the surveyor had allowed the contractor to deviate from the specifications, and that the works had never been "completed." It was held that such an objection could probably have been raised under the above section at the proper time ; but that in any case the justices were right in not allowing it to be raised before them (*Hayles* v. *Sandown U. D. C.*, [1903] 1 K. B. 169 ; 67 J. P. 177).

(3) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

See s. 8, *ante*, p. 887.

Charge on premises.

13.—(1) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

See the P. H. A., 1875. s. 257, *ante*, p. 568, and the notes thereon.

The section does not state from what date the interest is to run, but it has been decided that it runs from the date of the final apportionment (*Stock* v. *Meakin*, [1900] 1 Ch. 683). Under the P. H. A., 1875, s. 257, it runs from date of demand. Under the same section the rate of interest is to be a rate not exceeding 5 per cent. A frontager cannot deduct income tax on the interest due from him (*Gateshead Corporation* v. *Lumsden*, p. 569, *ante*).

The charge on the property operates as from the date of the completion of the works (*Stock* v. *Meakin*, *supra* ; *Surtees* v. *Woodhouse*, *ante*, p. 571). But of course unless the notices required by this Act to be served on the owner have been duly served the council have no charge upon the premises and no right to sell them (*Maguire* v. *Leigh-on-Sea U. D. C.* (1906), 70 J. P. 479 ; 95 L. T. 319).

The provisions of the Conveyancing Act, 1881, referred to, are ss. 18—24 ; see also s. 67 as to notices, and the Conveyancing Act, 1911, ss. 3—5. The power to appoint a receiver is the most useful of the powers hereby conferred on an authority : see *Tottenham U. D. C.* v. *Smith* (1897), Times, March 6th, where ROMER, J., appointed a receiver under a local Act conferring on the local authority in respect of a charge for

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street expenses all the rights and remedies of mortgagees under the Act of 1881. Forms of conveyance on sale by the authority where the owner has made default, and of statutory declaration to accompany the same, will be found in Prideaux's Conveyancing, 17th ed., Vol. I., pp. 349, 352. See also a form of conveyance in the Encyclopædia of Forms and Precedents, Vol. XII., at p. 781. There would, however, appear to be some doubt whether on a sale under the Conveyancing Act an authority will have power to pass the legal estate (see the argument in *West Ham Corporation* v. *Sharp*, *infra*, and the cases there cited).

It will be observed that it is not necessary under this Act, as it is under the P. H. A., 1875, to bring an action in order to enforce the charge. But the authority may do so, if it is more convenient (*West Ham Corporation* v. *Sharp*, [1907] 1 K. B. 445; 71 J. P. 100), and it would obviously be convenient if the doubt expressed above as to the power to pass the legal estate is well founded, for under an Order the authority would be able to sell the fee simple: see *Birmingham Corporation* v. *Baker*, *ante*, p. 571. As a result of paving works under this Act a sum of £137 was apportioned on 9 houses belonging to the defendant. The authority took out an originating summons in the Chancery Division asking for a declaration of charge for the £137 and interest thereon at 5 per cent., the usual inquiries, an order for sale and a receiver. The defendant paid the £137 with 4 per cent. interest, and objected that (1) proceedings had been commenced before three months had expired from the date of the notice; (2) 4 per cent. only should have been asked; (3) the £137 was asked as a whole sum and not apportioned on the houses individually; and (4) the proceedings ought to have been brought in the county court. An application for leave to interrogate was adjourned into court to come on with the summons, and the summons was amended by stating in a schedule how the £137 was apportioned upon the various houses. It was held that the defendant showed no defence and must pay the costs. Semble, an originating summons, if it is not adjourned into court, is cheaper and more expeditious than a plaint in the county court (*Pontypridd U. D. C.* v. *Jones* (1911), 75 J. P. 345); see also *Croydon R. D. C.* v. *Betts*, on p. 880, *ante*. As to the difficulty which arises where the owner of premises cannot be traced, see *Wealdstone U. D. C.* v. *Evershed*, on p. 572, *ante*.

In a case which arose under a local Act the urban authority obtained a declaration that they were entitled to a charge on the defendant's premises for the costs incurred as private street expenses. An order was obtained directing an inquiry as to whether there were other incumbrances, and directing the defendant to answer the inquiry by affidavit. The defendant ignored this order and failed to appear in obedience to an order for his examination. It was held that a writ of attachment must issue against him for disobeying the order and that the urban authority might add the costs of the motion for attachment to their security (*Tottenham U. D. C.* v. *Neilson* (1915), 85 L. J. Ch. 272; 79 J. P. 504).

Where a tenant for life has paid paving expenses he has a charge on the fee simple of the premises, notwithstanding the provisions of s. 17, which provides that a limited owner may raise money by mortgage for the payment of such expenses so that the principal due on the mortgage may be repaid within twenty years (*In re Pizzi*, *Scrivener* v. *Aldridge*, [1907] 1 Ch. 67; 71 J. P. 58).

A council executed street works under this Act, but when recovering their expenses were unable to determine the ownership of certain vacant land abutting on the street. The land, therefore, was sold, under the powers of s. 13, and the council found themselves with a surplus. The L. G. B., on being applied to, stated that they did not consider themselves in a position to give any formal directions in such a case, but, assuming that the council recovered "in respect of street works" in the case of every frontager all that was sufficient to enable them to repay with interest the money borrowed for the execution of the works in respect of which the premises were charged under the final apportionment, as the instalments became due and payable, they referred the council to s. 21 (3) of the Conveyancing and Law of Property Act, 1881, as applied by s. 13 (1), as indicating what would appear to be an appropriate application of the surplus sum in question. The sub-section is as follows: "The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior encumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale

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thereof." See hereon *West London Commercial Bank* v. *Reliance Building Society* (1885), 29 Ch. D. 954.

(2) The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority.

This is a very useful provision. Charges under the P. H. A., 1875, s. 257, do not require registration under the Land Charges Registration Act, 1888 (*R.* v. *Land Registry* (*Vice-Registrar of*), *ante*, p. 573); consequently, a purchaser of property may have no means of knowing whether such property is subject to a charge. So far as charges under this Act are concerned there will be no such difficulty, and it will always be prudent for an intending purchaser to make a search.

Recovery of expenses summarily or by action.

14. The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof.

Under the P. H. A., 1875, s. 150, the only remedies for recovery of expenses were by summary proceedings, or, in cases where the expenses were under £50, by action in the county court under s. 261. See the note at p. 305, *ante*. Under this Act an action may be brought in the High Court if it is thought desirable. It would seem that the six months' limitation imposed by the S. J. A., 1848, s. 11, does not apply to actions brought in either the High Court or the county court under this section (*Blackburn* (*Mayor, etc. of*) v. *Sanderson*, [1902] 1 K. B. 794; 66 J. P. 452; *cf. Metropolitan Water Board* v. *Bunn*, [1913] 3 K. B. 181; 77 J. P. 353). The period of limitation is probably twenty years, as the action would seem to be founded on a specialty: see a note by Sir F. POLLOCK at [1903] 2 K. B. 3, and cases there cited, and *In re Cornwall Minerals Rail. Co.*, [1897] 2 Ch. 74; 61 J. P. 535. There is no express provision in the Act requiring a formal demand for payment unless an authority intend to proceed summarily (see *per* BRETT, L.J., in *R.* v. *Local Government Board*, *ante*, at p. 596), but it may well be argued that one is necessary: see *Hampstead Borough Council* v. *Caunt*, [1903] 2 K. B. 1; 67 J. P. 344. The expenses being recoverable from the owner "for the time being," a purchaser may become liable for expenses incurred before the date of the purchase: see *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72; 56 J. P. 773; *Rowland* v. *Willis* (1899), 105 L. T. Newsp. 319, and *Hampstead Borough Council* v. *Caunt*, *supra*.

No objection to the proceedings of the authority, which could have, but has not, been raised under the Act can afterwards be raised when the authority seek to recover the expenses. See s. 8 (2), *Teddington U. D. C.* v. *Vile*, and other cases cited therewith at p. 879, *ante*.

In *Hayles* v. *Sandown U. D. C.*, *ante*, p. 876, a frontager, against whom proceedings were taken before justices to recover his apportioned share of the expenses, attempted to establish that the surveyor had allowed the contractor to deviate from the specifications, and that the works had never been "completed." It was held that such an objection could probably have been raised under s. 12 at the proper time; but that, in any case, the justices were right in not allowing it to be raised before them.

Semble, the right of action given by this section could only be enforced in the courts of this country (*Sydney Municipal Council* v. *Bull*, [1909] 1 K. B. 7).

15. The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable.

Section 15.
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Contribution by urban authority to expenses.

No provision of this kind is included in the P. H. A., 1875, and under that Act a council cannot defray part of the expenses out of the rates (see *Dryden* v. *Putney* (*Overseers of*), *ante*, p. 309). With regard, however, to expenses of sewering it may be otherwise, for the council may sewer a private street at their own cost under their general power to make sewers, and if so they may be able to contribute part of the cost. Irrecoverable expenses are, however, so chargeable. The general expenses are payable out of the general district rate, but sometimes out of the borough fund under the P. H. A., 1875, s. 207, *ante*, p. 469.

16. The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.

Exemption from expenses of incumbent of church.

This section is in substitution for the P. H. A., 1875, s. 151; but there are some points of difference which should be noted. It exempts not only incumbents and ministers, but trustees also, thus meeting the decision in *Hornsey L. B.* v. *Brewis*, *ante*, p. 317. And the text requires, not simply enables, the authority to bear the proportion in respect of which an exemption is allowed. As to the exemption of churches, chapels, etc., from poor rates, see note (*a*), *ante*, p. 316, and *Walton-le-Dale* v. *Greenwood* there cited, a case decided under this Act.

The expression "private street works" is defined in s. 6, *ante*, p. 873.

17. All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners of or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years.

Power for limited owners to borrow for expenses.

See the Lands Clauses Consolidation Act, 1845, ss. 7, 8, *post*, Vol. II., as to the persons under disability or limited owners, such as tenants for life, who have power to sell and convey or release lands under that Act.

Under this section a limited owner may charge or mortgage the premises, and not merely his interest in them: compare the P. H. A., 1875, s. 31, *ante*, p. 93.

Where a tenant for life has paid to a local authority the expenses of paving a private street, he has a charge under s. 13 on the fee simple of the premises in respect of which the expenses were incurred, notwithstanding the provisions of this section (*In re Pizzi, Scrivener* v. *Aldridge*, *ante*, p. 883).

Section 18.

Power for urban authority to borrow for private street works.

18. The urban authority may from time to time, with the sanction of the Local Government Board, borrow, on the security of the district fund and general district rates or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable, moneys for the purpose of temporarily providing for expenses of private street works, and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875.

As to the rates out of which the general expenses of an urban authority are defrayed, see s. 207 of the P. H. A., 1875, *ante*, p. 469, and as to the borrowing powers of an urban authority under that Act, see ss. 233—243, *ante*, pp. 521—539.

Applications to the Ministry of Health under this section must be accompanied by a copy of the resolution of the council authorising it, and by certain particulars in a prescribed form. The Ministry rarely allow a longer term than seven years for repayment.

Adoption of private streets.

19. Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

The fact that a private street has been made up at the cost of the frontagers does not in itself (*i.e.* apart from formal adoption) confer any rights as against the owner of the soil upon either the public or frontagers who have paid their share (*Moubray Rowan* v. *Drew*, [1895] A. C. 293). See also as to rights in a private street, *Kirby* v. *Paignton U. D. C.*, p. 291, *ante*.

This section is in substitution for the P. H. A., 1875, s. 152, *ante*, p. 319, or, where the P. H. A., 1890, has been adopted, for s. 41 of that Act, *ante*, p. 855.

It is to be observed, however, that under this section the works need not have been executed by the authority, nor can the owners of the street object to its being declared a highway repairable by the inhabitants at large. Under this Act, therefore, a street in all respects private may be opened for public traffic without the consent of the owners, and possibly to their detriment.

An authority will have no discretion under this section if a street has been made up in pursuance of a request made by a majority of the owners under the P. H. A., 1907, s. 19 (4), *post*, p. 1030.

A form of notice will be found in the Encyclopædia of Forms and Precedents, Vol. XI., p. 87.

On street being paved, etc., urban authority to declare same public highway.

20. If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street, declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large.

A form of application and notice for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XI., pp. 87, 88.

This section will apply only when all the works above mentioned have been executed in the street. The expression "houses and land in such street" avoids the ambiguity pointed out in the note to s. 41 of the Act of 1890, *ante*, p. 856. The authority will have no discretion under this section.

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An application under this section will not be necessary when an authority make up a street in consequence of a counter-notice from owners under the P. H. A., 1907, s. 19 (4), *post*, p. 1030.

21.—(1) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

Separate accounts of expenses of works.

(2) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works (*a*), or if there is no such loan outstanding then in such manner as may be directed by the Local Government Board (*b*).

(*a*) The authority may borrow for private street works under s. 18. If *any* loan in respect of private street works in the district is outstanding, the sub-section must be complied with. This must sometimes work inconveniently.

(*b*) The Ministry of Health will presumably direct payment into the general district fund, or in the case of a rural council into the fund applicable to special expenses.

22. No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street (*a*); and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor (*b*); and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision, such company would in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive (*c*). This section shall not apply to any street existing at the date of the adoption of this Act.

Railways and canals abutting but not communicating with streets not to be chargeable with private street expenses.

(*a*) This provision is intended to meet the decisions in *Higgins* v. *Harding* and *L. & N. W. Rail. Co.* v. *St. Pancras (Vestry of)*, *ante*, p. 299, followed in *Caledonian Rail Co.* v. *Edinburgh Magistrates* (1901), 3 F. 645. It will only apply where there is no communication between the railway and the street.

A railway company objected to the inclusion of a piece of land belonging to them in a provisional apportionment for a street on which the land abutted, but with which it had no direct communication, on the ground that such land was at the time of the laying out of the street used by them solely as a part of their line of railway or works within the meaning of this section. The land had been acquired by the company

Note to Section 22.

solely for the purpose of their railway and works, but they allowed their servants, for the time being, to use it as garden ground on payment of a nominal rent. The justices found as a fact that it was not used in any way as part of the company's railway, sidings, station or works, and that, therefore, the company's objection failed, and they refused to state a case on the ground that the question was one of fact. It was held that as there was no evidence contrary to the justices' finding, the court would not compel them to state a case (*R.* v. *Jones* (1907), 71 J. P. 326; 96 L. T. 723).

It has also been held that land used by a railway company for the purpose of depositing ashes thereon did not fall within a similarly worded exemption in a local Act (*In re Carlisle Corporation and Saul* (1907), 71 J. P. 502; 97 L. T. 514).

See also, as to words "part of a railway," *Glasgow & S. W. Rail. Co.* v. *Ayr Magistrates*, [1912] A. C. 520, where under the Burgh Police (Scotland) Act, 1892, s. 4, it was held that a strip of a road purchased in 1889 by the company for "extraordinary purposes," but put to no use for 20 years, was not a part of their railway.

(*b*) This is rather hard on the owners in question. The sum which otherwise would have been apportioned to the company is to be paid by other owners in proportions settled by the surveyor. The whole of the expenses are not to be apportioned in the first instance among all the owners other than the company.

(*c*) No provision is here made for the case where there have been changes of ownership.

Expenses of local authority.

23. All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts.

The expenses of an urban authority will, therefore, be defrayed out of the rate mentioned in the P. H. A., 1875, s. 207, *ante*, p. 469, which will generally be the general district rate. Where a rural authority act under urban powers conferred on them under s. 4, *ante*, their expenses would be defrayed as general expenses (as to which see the P. H. A., 1875, s. 229, *ante*, p. 510), in the absence of a provision in the order declaring them to be special. Such a provision is usually inserted.

Powers of Act cumulative.

24. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

This section preserves the effect of local Acts, and where there is such an Act in force the authority will have an alternative remedy. Compare the P. H. A., 1875, s. 341, *ante*, p. 666, and the P. H. A., 1890, s. 10 (1), *ante*, p. 824.

Certain sections of Public Health Acts not to apply.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force.

This Act when in force takes the place of the sections named in the text. But proceedings already commenced under s. 150 are not made void by the adoption of this Act (*Heston and Isleworth U. D. C.* v. *Grout*, [1897] 2 Ch. 306).

When an urban authority have adopted the Act the adoption cannot afterwards be revoked, so that they will no longer be able to exercise in any case powers under ss. 150 and 152 of the Act of 1875.

A rural authority, though they cannot adopt the Act, are more favourably placed than an urban authority in one respect, for they may apply to the M. of H. for powers under either Act, or under both Acts, in regard to different streets according to circumstances.

26. This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames. **Section 26.** For protection of Conservators of River Thames.

See the Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.).

THE SCHEDULE.

PRIVATE STREET WORKS.

PART I. Sections 6, 11.

PARTICULARS TO BE STATED IN SPECIFICATIONS, PLANS AND SECTIONS, ESTIMATES, AND PROVISIONAL APPORTIONMENTS.

Specifications.—These shall describe generally the works and things to be done, and in the case of structural works shall specify as far as may be the foundation, form, material, and dimensions thereof.

Plans and Sections.—These shall show the constructive character of the works, and the connexions (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

Estimates.—These shall show the particulars of the probable cost of the whole works, including the commission provided for by this Act.

Provisional Apportionments.—These shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners (*a*), and shall also state whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based.

(*a*) This expression means "a person whom the local authority really believe to be the owner; and a person who has been the owner, and whom the local authority has dealt with as such, is certainly a reputed owner" (*per* CHANNELL, J., in *Wirral R. D. C.* v. *Carter*, [1903] 1 K. B. 646; 67 J. P. 31).

PART II.

PUBLICATION OF NOTICE.

Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this Schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks (*a*).

(*a*) It is not necessary that seven days should intervene between each successive publication (*Aberdeen (City of)* v. *Watt* (1901), 3 F. 787).

Section 1.

THE PUBLIC AUTHORITIES PROTECTION ACT, 1893 (*a*).

(56 & 57 VICT. c. 61.)

An Act to generalise and amend certain statutory provisions for the Protection of Persons acting in the execution of Statutory and other Public Duties. [5th December 1893.]

Protection of persons acting in execution of statutory or other public duty.

1. Where [*after the commencement of this Act*] any action, prosecution, or other proceeding (*b*) is commenced in the United Kingdom against any person (*bb*) for any act done in pursuance, or execution, or intended execution of any Act of Parliament (*c*), or of any public duty or authority (*d*), or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall (*dd*) have effect :

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (*e*) :

(b) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client (*f*) :

(c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment (*g*) : but this provision shall not affect costs on any injunction in the action :

(d) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority (*h*).

(*a*) This Act took the place of s. 264 of the P. H. A., 1875, and similar sections in other Acts, which it repealed. It abolished notice of action in every case, but limits the time within which proceedings may be instituted against a local authority. It was held applicable to an action in respect of a right of action accrued before it was passed (*The Ydun*, [1899] P. 236).

"Action, prosecution, or other proceeding."

(*b*) These words do not include interlocutory applications or appeals ; they include actions for an injunction or declaration, whether coupled with a claim for damages or not (*Fielden* v. *Morley Corporation*, [1900] A. C. 133 ; 64 J. P. 484 ; *Harrop* v. *Ossett*

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Corporation, [1898] 1 Ch. 525; 62 J. P. 297; *Toms* v. *Clacton U. D. C.* (1898), 62 J. P. 505; *Grand Junction Waterworks Co.* v. *Hampton U. D. C.* (1899), 63 J. P. 503; 15 T. L. R. 412; *Ambler* v. *Bradford Corporation*, *infra*). See, however, *Farquhar* v. *Aberdeen Magistrates*, [1912] S. C. 1294, where the LORD PRESIDENT said that he did not see how the Act could be prayed in aid in a question of interdict, since the court can only grant interdict against a continuing wrong. And see also *Att.-Gen.* v. *West Ham Corporation*, [1910] 2 Ch., at p. 570, where the court held that the Act applied in respect of Acts completed more than six months before action, but granted a declaration in respect of overdrafts from a bank which amounted to a continuing illegality. And see *Att.-Gen.* v. *Lewes Corporation*, [1911] 2 Ch. 495; *Hart* v. *St. Marylebone Borough Council* (1912), 76 J. P. 257.

An action for an account of fair tolls is within the Act (*Newcastle* (*Duke of*) v. *Worksop U. D. C.*, [1902] 2 Ch. 145); but it has no application to an action *in rem* (*The Burns*, [1907] P. 137; 71 J. P. 193); nor to claims for compensation under the Workmen's Compensation Acts (*Fry* v. *Cheltenham Corporation* (1912), 81 L. J. K. B. 41; 76 J. P. 89), or under the Lands Clauses Acts (*Glasgow Corporation* v. *Miller* (1905), 13 Sc. L. T. 167), or indeed, it would seem, under any Act (*Delany* v. *Metropolitan Board of Works*, *post*, p. 899; *Glasgow Corporation* v. *Smithfield, etc., Co.*, [1912] S. C. 364 (compensation for condemned meat). The Act does not apply to an action brought against a police authority for compensation under the Riot (Damages) Act, 1886 (*Kauffman* v. *Liverpool Corporation*, [1916] 1 K. B. 860; 80 J. P. 223). Nor does it apply to an action for an indemnity brought against a public authority under s. 6 (2) of the Workmen's Compensation Act, 1906, by the employer of a workman injured by the negligence of the defendant's servant (*Tuckwood* v. *Rotherham Corporation*, [1921] 1 K. B. 526; 85 J. P. 101). Nor does it apply to proceedings for a rule *nisi* for *quo warranto* against a clerk claiming to act as returning officer (*R.* v. *Carter* (1904), 68 J. P. 466); nor to an application for a *certiorari* to quash an auditor's surcharge (*Roberts* v. *Battersea Borough Council* (1914), 78 J. P. 265). Whether it applies to applications for a prohibition or a *mandamus* was discussed but not decided in *R.* v. *Kensington Income Tax Commissioners*, [1913] 3 K. B. 870. In *R.* v. *Hertford Union* (1914), 78 J. P. 405, AVERY, J., held that the six months' limitation did not apply to the prerogative writ of mandamus. See the decision of the Court of Appeal in *R.* v. *Port of London Authority*, [1919] 1 K. B. 176; and see also *R.* v. *Marshland, etc. Commissioners*, [1920] 1 K. B. 155.

It appears to be somewhat doubtful whether the Act applies to a case in which a claim to land is in question. See *Cross* v. *Rix* (1913), 77 J. P. 84; 29 T. L. R. 85. Where an authority procured themselves to be added as defendants in an action, it was held that it had not been "commenced" against them, and that the Act did not apply to it (*McRobert* v. *Reid* (1914), 51 Sc. L. R. 500).

"Any person."

(*bb*) The protection of the Act extends to municipal or local authorities in the execution of duties not strictly municipal or official, but arising in connection with commercial enterprises which they are empowered by Parliament to undertake, such as building a hospital (*Harrop* v. *Ossett*, *supra*), supplying water (*Fielden* v. *Morley Corporation*, *ante*, p. 890), or acting as a port and harbour authority (*The Ydun*, *ante*, p. 890), or as a tramway authority (*Parker* v. *London C. C.*, *post*, p. 892; *Lyles* v. *Southend-on-Sea Corporation*, p. 893, *post*; *Spittal* v. *Glasgow Corporation* (1904), 6 F. 828).

In *The Johannesburg*, [1907] P. 65, where many of the previous decisions were reviewed, it was argued that the Act only applied to persons exercising powers on behalf of the public as a whole, such as a municipal corporation, and did not apply to a port authority (the Tyne Commissioners), but the argument did not prevail. The Act applies to an authority's officers and servants acting under its orders (*Greenwell* v. *Howell*, p. 893, *post*), but not to their contractors (*Tilling, Ltd.* v. *Dick, Kerr & Co., Ltd.*, *infra*). As to its applicability to independent officials and individuals performing a statutory duty, see *Salisbury* v. *Gould* and *Wilson* v. *Mackay*, p. 893, *post*, and *cf.* *Doust* v. *Slater*, p. 894, *post*. See also *Weir* v. *Thomas* (1915), 79 J. P. 54, where an action was brought against a medical officer of health and a sanitary inspector for alleged negligence in failing to inform the plaintiff that certain meat was unfit for human food and it was held that the officers in question were entitled to the protection of the Act.

It has been held that a company incorporated by Act of Parliament not only for the performance of duties of public utility, but also for the purpose of earning profits, is not entitled to the benefit of the Act (*Att.-Gen.* v. *Margate Pier and Harbour Co.*, [1900] 1 Ch. 749; 64 J. P. 405). In a later case the Court of Appeal pointedly refrained from expressing an opinion whether the Act applied to profit-earning companies (*Ambler* v. *Bradford Corporation*, [1902] 2 Ch. 585; 66 J. P. 708); but

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in a still later case CHANNELL, J., referred to *Att.-Gen.* v. *Margate Pier and Harbour Co.*, *supra*, in terms which appear to show that the decision met with his approval (*Parker* v. *London C. C.*, [1904] 2 K. B. 501; 68 J. P. 239); and see also the remarks of VAUGHAN WILLIAMS, L.J., in *Lyles* v. *Southend-on-Sea Corporation*, p. 893, *post*, and *English* v. *Metropolitan Water Board*, *infra*. In a Scotch case it was held that the Act does not protect commercial companies, and that when the liabilities and powers of such a company are transferred to a public authority, such authority cannot as to a liability to which they have succeeded rely upon the statute any more than their predecessors could have done (*Lanarkshire Upper Ward District Committee* v. *Airdrie, Coatbridge and District Water Trustees* (1906), 8 F. 777). See also on the latter point, *English* v. *Metropolitan Water Board*, [1907] 1 K. B. 588; 71 J. P. 313. In Ireland it has been held that the Act has no application in the case of trustees of a loan fund society sued for breach and neglect of their duties as such trustees (*O'Brien* v. *Mitchelstown Loan Fund*, [1903] 1 I. R. 282).

"Pursuance, execution or intended execution of Act."

(*c*) The phrase "Act of Parliament" includes a private Act (*Bennett* v. *Stepney Borough Council*, p. 893, *post*).

An action brought by a contractor, officer or servant against a local authority for breach of contract is not within this provision (*Davies* v. *Swansea Corporation* (1853), 8 Ex. 808; 17 J. P. 649; *Clarke* v. *Lewisham Borough Council* (1902), 67 J. P. 195; 19 T. L. R. 62). In *National Telephone Co.* v. *Kingston-upon-Hull Corporation* (1903), 89 L. T. 291; 52 W. R. 26, BUCKLEY, J., held that the Act did not apply to a case which turned upon the construction of a contract and the effect of acts done under that contract; and it has been held that it does not apply to an action brought by a contractor where the cause of action alleged is a fraud which induced him to make his contract with the authority (*Pearson* v. *Dublin Corporation*, [1907] A. C. 351; [1907] 2 I. R. 537). See also *Sharpington* v. *Fulham Guardians*, [1904] 2 Ch. 449; 68 J. P. 510; *Lyles* v. *Southend-on-Sea Corporation*, *post*, p. 893; and *McPhie* v. *Greenock Magistrates* (1904), 7 F. 246; *Bradford Corporation* v. *Myers*, *post*, p. 896; and *Hayes* v. *King's County C. C.*, [1917] 2 I. R. 496. An act done in relation to a contract may be tortious (see *Sachs* v. *Henderson*, [1902] 1 K. B. 612; *Du Pasquier* v. *Cadbury & Co., Limited*, [1903] 1 K. B. 104). The Act does not apply to actions for the price of goods sold and delivered, and for work and labour done (*Milford Docks Co.* v. *Milford Haven U. D. C.* (1901), 65 J. P. 483); nor to an action brought in respect of an act done by an independent contractor employed by a public authority in pursuance of his contract with them (*Kent C. C.* v. *Folkestone Corporation*, [1905] 1 K. B. 620; 69 J. P. 125). In such circumstances neither the public authority (*Kent C. C.* v. *Folkestone Corporation*, *supra*), nor the contractor (*Tilling, Limited* v. *Dick, Kerr & Co., Limited*, [1905] 1 K. B. 562; 69 J. P. 172), can claim the benefit of the Act. It was also held that an action brought to set aside an adjustment agreement made between two local authorities upon the creation of a new urban district was not within the Act (*Holsworthy U. D. C.* v. *Holsworthy R. D. C.*, [1907] 2 Ch. 62; 71 J. P. 330). The council of a metropolitan borough in which the Public Libraries Act, 1892, was in force, in the course of demolishing some old premises for the purpose of erecting a free library, made a hole in the wall of the adjoining owner's premises and did damage. In an action for damages brought by the adjoining owner subsequent to the expiration of six months after the act complained of, the council pleaded the statute, but it was held that it did not apply (*Walsh* v. *Southwark Borough Council* (1908), 72 J. P. 71).

The P. H. A., 1875, s. 264, p. 583, *ante*, was held inapplicable to an action which was in substance merely an action of ejectment *Foat* (or *Holder*) v. *Margate Corporation* (1883), 11 Q. B. D. 299; 47 J. P. 535), and it is doubtful if the present Act applies to such actions. See *Cross* v. *Rix* (1912), 77 J. P. 84; 29 T. L. R. 85, a claim for damage done in assertion of a proprietary right in land.

An action for an injunction to restrain a council from using land as a cemetery except beyond a radius of 100 yards from a dwelling-house (as required by s. 9 of the Burial Act, 1855) is an action against them for an act done in pursuance of a public duty within the meaning of the Act (*Toms* v. *Clacton U. D. C.* (1898), 62 J. P. 505; 78 L. T. 712). So also is an action to restrain a council from erecting a fire engine station on surplus land, part of which has been sold under restrictive conditions (*Holford* v. *Acton U. D. C.*, [1898] 2 Ch. 240).

Where a sanitary authority serve a notice requiring abatement of a nuisance in connection with a supposed "drain," and in the course of works carried out in compliance with the notice it is discovered that the supposed drain is a "sewer," and that the authority was liable to do the repairs required by the notice, an action to recover

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from the authority the cost of the repairs as money paid to their use is an action for an act done in pursuance and execution, or intended execution, of an Act of Parliament or of a public duty or authority within the meaning of the text (*Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693; following *Waterhouse* v. *Keen*, and *Midland Rail. Co.* v. *Withington L. B.*, *post*, p. 895).

The words of the section were held wide enough to embrace an action for damages by a passenger who, while travelling on a tramcar belonging to a municipal corporation, was injured owing to the negligence of the corporation's servants, his cause of action, in the opinion of the court, not depending on contract, but arising out of a breach of the duty to carry him safely cast upon the corporation by the fact of his being a passenger whom by the terms of their Light Railway Order they could not refuse to carry (*Lyles* v. *Southend-on-Sea Corporation*, [1905] 2 K. B. 1; 69 J. P. 193).

An officer of a county council, to which the duties of a district council as to a public right of way within their district under s. 26 of the L. G. A., 1894, had been duly transferred under *ibid.*, sub-s. (4), drove along the way by direction of the county council in assertion of the public right to use it as a highway. The owner of the land having brought an action for trespass against the officer, judgment was for the defendant. *Held*, that the action was commenced for an act done in pursuance or execution of an Act of Parliament within the meaning of the text (*Greenwell* v. *Howell*, [1900] 1 Q. B. 535). Where a district council abated an encroachment upon a main road vested in the county council, and successfully defended an action brought against them for so doing, it was held that they were entitled under the Act to costs as between solicitor and client (*Harvey* v. *Truro R. D. C.* (1903), 68 J. P. 51).

Although not actually deciding the point, GRANTHAM, J., expressed the opinion that a medical practitioner in private practice, who negligently diagnoses a non-infectious illness and notifies it as an infectious one, thereby causing damage to the patient, would be within the protection of the Act (*Salisbury* v. *Gould* (1904), 68 J. P. 158).

An action was brought against the commanding officer of a Volunteer corps in respect of a street accident alleged to be due to his negligence in selecting horses and drivers for an ammunition waggon. It was held that as the cause of action alleged was his neglect of duty in his public capacity of commanding officer training his corps, the action was within the Act (*Wilson* v. *Mackay* (1904), 7 F. 168).

The Act was held to apply to an action for libel by a schoolmaster against a school board in whose employment he had been, in respect of statements contained in a resolution of the board stating the reasons for the master's dismissal (*Reid* v. *Blisland School Board* (1901), 17 T. L. R. 626); also to an action for malicious prosecution (*Bostock* v. *Ramsey U. D. C.*, *post*, p. 900). A public official, acting in the exercise of a statutory or other authority is not protected by the Act if he acts maliciously, but malice cannot be presumed from the fact that he is mistaken as to his authority if he bonâ fide believes that he is acting under the powers conferred upon him. So held in an action by an Inspector of Schools against a Resident Commissioner in Ireland alleging malice and abuse of authority (*Newell* v. *Starkie*, [1919] 2 Ir. R. 325; 83 J. P. 113).

A servant of a council who for some years had paid contributions to a superannuation fund under a private Act was dismissed, and brought an action for the recovery of his contributions which he alleged to be due to him on his dismissal. It was held that as the action was brought more than six months after the alleged default of the defendants, s. 1 of this Act applied, and the action was not maintainable (*Bennett* v. *Stepney Borough Council* (1912), 76 J. P. 473; 107 L. T. 383).

A shipowner brought an unsuccessful action against the Tyne Improvement Commissioners in respect of damage done by a fire on one of their staiths. He failed, and, in opposition to an application for solicitor and client costs, contended that the defendants were not sued in respect of an act done in the intended execution of a public duty, as the negligence and breach of duty alleged against them was in respect of unauthorised works. It was held that the defendants erected and worked the staith in "intended execution" of statutory powers; and, if in constructing it they had deviated a little from such powers, adjoining owners were the only people entitled to complain, and the plaintiff could not rely on that fact (*The Johannesburg*, [1907] P. 65).

The following cases, mostly as to the necessity for "notice before action," were decided under earlier Acts upon such expressions as "anything done or intended to be done or omitted to be done under the provisions of this Act," or the like.

A defendant contracted with a local board for the digging of wells, the work to be done to the satisfaction of the board or their surveyor, and the digging to be done under the direction of the surveyor. A hole made in digging one of the wells in a

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highway was left without sufficient light, and the plaintiff's horse fell into it. For the damage thereby occasioned, the plaintiff brought an action without notice. *Held*, that the defendant was a person acting under the direction of the local board within the meaning of s. 139 of the P. H. A., 1848, and that the action was in respect of something "done or intended to be done under the provisions of" the Act (*Newton* v. *Ellis* (1855), 5 El. & Bl. 115; 19 J. P. 805).

The plaintiff and defendant were occupiers of adjoining houses separated by a covered passage. The house of the defendant was a publichouse, and the public were accustomed to commit nuisances against the wall of the plaintiff's house. The district board thereupon directed their inspector of nuisances to cause a urinal to be put up against the plaintiff's wall, and the inspector gave authority to the defendant to erect it, which he accordingly did, the district board paying a portion of the expense. It was held that the defendant, having acted as the inspector's delegate, in a matter intended to be done under the provisions of the Act, was entitled to notice of action under the Metropolis Management Act, 1862, s. 106 (*Chambers* v. *Reid* (1866), 30 J. P. 231; 13 L. T. 703). But where under the same Act a district board required a person to drain into a sewer, and in doing so he committed a trespass, it was held that he was acting, not under the orders or directions of the board, or by their authority, but simply in performance of a duty imposed upon him by statute, which, if he omitted, the board were empowered to call upon him to perform (*Doust* v. *Slater* (1869), 10 B. & S. 400; 33 J. P. 581). But, *semble*, the present Act might apply to a person so acting.

A contractor, employed by the Metropolitan Board of Works to enlarge a sewer, erected in it a dam, the water above which was removed by pumping. Owing to his negligence in not working the pumps, the sewage flowed back into the plaintiff's premises and injured them. *Held*, that the injury was occasioned by acts "done or intended to be done" under the powers of the board under the Metropolis Management Act, 1862, within the meaning of s. 106 thereof (*Poulsum* v. *Thirst* (1867), L. R. 2 C. P. 442). A contractor under a district board was engaged in constructing a sewer, and employed men with horses and carts. The men were allowed an hour for dinner, but were not permitted to go home, or to leave their horses and carts. One of them went home, about a quarter of a mile out of the direct line of his work, to his dinner, and left his horse unattended in the street before his door. The horse ran away, and damaged certain railings belonging to the plaintiff. The jury found that the driver was acting within the scope of his employment. It was held that the thing complained of was not a thing "done or intended to be done under" the powers of the board under the Act of 1862 (*Whatman* v. *Pearson* (1868), L. R. 3 C. P. 422).

The plaintiff was a driver employed by contractors, who had contracted with the defendants to provide horses and drivers for their carts used in watering the streets under the powers of the Metropolis Management Acts. The defendants negligently supplied a cart with a defective axle, by reason whereof the plaintiff, while watering the streets, was thrown off and injured. It was held that the supply of the water-cart to the plaintiff for the purpose of watering the streets was a thing "done or intended to be done" under the Acts (*Edwards* v. *St. Mary, Islington (Vestry of)* (1889), 22 Q. B. D. 338; 53 J. P. 180).

The defendants, a local board, left unfenced a goit adjoining a public footpath within their district, by reason whereof the plaintiff's husband, while using the footpath, fell into the goit and was drowned. It was held that the alleged cause of action being the continued non-performance of a duty imposed upon them by the P. H. A., 1848, and therefore a thing "done or intended to be done under" the provisions of the Act, the defendants were entitled to notice of action (*Wilson* v. *Halifax (Mayor, etc. of)*, *ante*, p. 254). *Per* KELLY, C.B.: "It is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of those clauses requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament."

The defendants, surveyors of highways, received payment from the plaintiff of an assessment upon a highway rate which had been improperly or irregularly made. They had intended to act in the performance of the duties of their office. In an action to recover back the money, it was held that the acts complained of were done "in pursuance of" the Highway Act, 1835. *Per* LUSH, J.: "The question was whether the defendants in making the rate intended to do what they were authorised to do. It is clear that they bona fide believed they were doing what the law allowed,

and that is all that is needed to entitle them to the protection of the statute." *Per* BLACKBURN, J.: "It has long been decided that such a provision is intended to protect persons from the consequences of committing illegal acts which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified by its terms, and cannot be defended by its provisions" (*Selmes* v. *Judge* (1871), L. R. 6 Q. B. 724; 35 J. P. 645).

Where a local board having authority to moor a landing-stage in a navigable river, fastened it with an anchor, but omitted to bury the same properly, by reason of which omission a vessel in navigating the river suffered damage, it was held that their omission amounted to an "act done or intended to be done" under the provisions of the statute in question (*Joliffe* v. *Wallasey L. B.* (1873), L. R. 9 C. P. 62; 38 J. P. 40).

To an action for slander the defendant pleaded that the words were spoken while he was acting as clerk of the markets, in pursuance of the Acts relating to municipal corporations in Ireland, which entitled him to a month's notice of action for any act done "in pursuance of" them. The plea was held good, for the words spoken while acting in pursuance of the statutes were as much within their protection as acts done (*Murray* v. *McSwinney* (1876), Ir. Rep. 9 C. L. 545); see, however, *Royal Aquarium, etc. Society* v. *Parkinson*, [1892] 1 Q. B. 431; 56 J. P. 404.

The omission to repair the handrail of a bridge over a brook was held to be something done in pursuance of, or under the authority of, the Highway Act, 1835, so as to require notice (under s. 109) of an action for an injury sustained by reason of such omission (*Holland* v. *Northwich Highway Board* (1876), 40 J. P. 517; 34 L. T. 137).

The defendant authority gave to the plaintiffs notice to pave a street under the P. H. A., 1875, s. 150, and on default themselves executed the work, and the plaintiffs on demand paid the amount apportioned on them. Both parties then believed that the street was not a highway repairable by the inhabitants, but some time afterwards it was discovered that it was such a highway, and the plaintiffs sued to recover back the amount. It was held that the claim was for something "done, or omitted to be done," under the Act (*Midland Rail. Co.* v. *Withington L. B.* (1883), 11 Q. B. D. 788; 47 J. P. 789; following *Waterhouse* v. *Keen* (1825), 4 B. & C. 200, and *Selmes* v. *Judge*, *supra*).

A local board constructed a pier under powers given by Provisional Order and confirming Act. The Order vested the pier in the board, and provided that expenses incidental to it should be discharged out of the general district rate. The plaintiffs were admitted to the pier as passengers of a steamboat company, who paid a rent to the board for the right to land passengers. While so using the pier the plaintiffs were injured by the negligence of the board or their servants. It was held that an action for such negligence was not an action for anything "done or intended to be done or omitted to be done" under the P. H. A., 1875 (*Ongley* v. *Chatham L. B.* (1887), 3 T. L. R. 706; 4 T. L. R. 6).

An action was brought to recover penalties under the local Acts authorising the construction of the Swansea Waterworks. By these Acts the defendants were bound to keep up a flow of minimum quantities of water into certain streams for the benefit of persons interested, including the plaintiff. In case of failure otherwise than through inevitable accident the defendants were liable to pay daily penalties and compensation. It was held that the claim was for things "done or intended to be done or omitted to be done" under the Acts (*Lewis & Sons* v. *Swansea (Corporation of)*, W. N. (1887), p. 234).

(*d*) The words "public authority" include a Provisional Order for an electric lighting undertaking duly confirmed by statute: see *Chamberlain and Hookham* v. *Bradford Corporation* (1900), 64 J. P. 771; 83 L. T. 518; *Ambler* v. *Bradford Corporation*, *ante*, p. 891. "Public duty or authority."

A borough council who were the water authority for their district were owners of a motor car, and they employed a chauffeur to drive it. The car was used for general purposes, but especially for the purpose of taking about the borough officials. On a certain day the car, containing, besides the chauffeur, the water engineer of the council, and a clerk from the Treasury Department, was taken out to visit three of the council's pumping stations, in order that the engineer might examine them and that the clerk might pay the wages of the persons employed there. After these officials had performed their duties, and while the car was returning to the garage, the engineer having left it but the clerk being still in it, it collided with and injured the plaintiff through the alleged negligence of the chauffeur. More than six months after the accident the

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plaintiff brought his action. *Held*, that the action was not brought in respect of any alleged neglect or default in the execution of any Act of Parliament or of any public duty or authority within the meaning of that Act, and that the action lay notwithstanding that it had not been brought within six months after the accident (*Clarke* v. *St. Helens Borough Council* (1915), 85 L. J. K. B. 17; 79 J. P. 529).

The defendants were a water board having certain statutory duties and powers in relation to the supply of water in London and certain adjoining districts. They used motor lorries to convey piping and other stores to the depots established by them in their district. On September 17, 1919, they despatched from Battersea to their depot at Lea Bridge a lorry laden with water pipes and other stores for repairs and maintenance. Having arrived at Lea Bridge and discharged the water pipes there, certain empties were put on the lorry and, so loaded, the lorry returned to the place from which it started. During that return journey, loaded with empties, the lorry ran into and knocked down and seriously injured the plaintiff, who claimed damages from the defendants, but did not commence his action within six months of the accident. It was held that the use of the lorry at the time of the accident was "in pursuance or execution or intended execution of" the statutory duty and authority of the defendants, and that, therefore, they were protected (*Edwards* v. *Metropolitan Water Board*, [1922] 1 K. B. 291; 86 J. P. 33).

A municipal Corporation who were also gas authority were empowered by their Act to sell the coke produced in the manufacture of gas. They contracted to sell and deliver a ton of coke to the plaintiff, and by the negligence of their agent the coke was shot through the plaintiff's shop window. More than six months after the plaintiff commenced the action, and the Act was pleaded in defence. It was held that the act complained of was not an act done in the direct execution of a statute, or in the discharge of a public duty or the exercise of a public authority, and that the Act was not a defence to the action (*Bradford Corporation* v. *Myers*, [1916] A. C. 242; 80 J. P. 121). This decision was applied and followed in *Hayes* v. *King's County C. C.*, [1917] 2 Ir. R. 496. But the Act was held applicable in an action against an insurance committee constituted under the National Health Insurance Act to set aside their decision with reference to a deduction for extravagant prescribing by a medical practitioner (*Mitchell* v. *Aberdeen Insurance Committee*, [1918] S. C. 415). And it was held that the Act applies to servants of the Crown acting within the scope of their public duties (*The Danube II.*, [1920] P. 104).

A man who had been injured by being run over by an ambulance waggon belonging to an ambulance association, brought an action against the association more than six months after the accident. The association averred that they were incorporated by Royal Charter to do benevolent work, and that in running the waggon they were acting in execution of the public duty or authority entrusted to them by virtue of the charter. It was held that the association were not charged with any public duty or authority, and were not entitled to the protection of the Act (*Ayr* v. *St. Andrews Ambulance Association*, [1918] S. C. 158). In another case of injury done by an ambulance the defendants were held entitled to the protection of s. 166 of the Public Health (Scotland) Act (*Baker* v. *Glasgow Corporation*, [1916] S. C. 199).

The plaintiff was injured by an escape of gas due to the negligence of the defendant's servant when fixing a meter, stoves and fittings, and connecting the pipes in a house where the plaintiff was employed. It was held that having regard to the Gasworks Clauses Act, 1871, the defendant's servant was acting in the execution or intended execution of an Act of Parliament, and that the defendants were entitled to the protection of the statute (*Clayton* v. *Pontypridd U. D. C.*, [1918] 1 K. B. 219; 82 J. P. 246).

Pleading statute: Waiver.

(*dd*) But the statute must be pleaded if it is to be relied upon (R. S. C., Order XIX., r. 16; C. C. R., Order X., r. 14); see *Gregory* v. *Torquay Corporation*, [1912] 1 K. B. 442; 76 J. P. 73, as to what is a sufficient description of it in a county court pleading. If defendants ask at a late stage of an action for leave to amend by pleading the statute, leave may be refused altogether (*Aronson* v. *Liverpool Corporation* (1913), 77 J. P. 176); and even if it be granted, the defendants, though succeeding on the plea, may have to bear the costs (*Att.-Gen.* v. *West Ham Corporation*, [1910] 2 Ch. 560; 74 J. P. 406). See *Cross* v. *Rix*, p. 892, *ante*, for a case where a nonsuit on the plaintiff's opening was held not to be justified.

It would seem, too, that defendants may so conduct negotiations after a claim is made upon them as to debar them from relying upon the limitation provisions of the Act; see *Paterson* v. *Glasgow Corporation* (1908), 46 Sc. L. R. 10, where the court, having regard to mistakes made and letters written by officials of the corporation, held

hat it would be inequitable to allow them to rely on a very similar provision. See upon this point, *Hewlett* v. *London C. C.* (1908), 72 J. P. 136; 24 T. L. R. 331; there he plaintiff, being injured, owing to the negligent driving of the defendants' servant, claimed compensation from the defendants, and negotiations were entered into with a view to settling her claim. More than six months after the alleged act of negligence, he negotiations having broken down, the plaintiff commenced an action and the defendants pleaded the statute. The jury found that the defendants had by their conduct induced the plaintiff to delay commencing an action. It was held that the defendants were not debarred from setting up the statute in defence. See also *Fraser* v. *British South Africa Co.* (1911), Times, October 25th, Nov. 24th, where it was held that the terms of an alleged agreement would not debar the company from relying on a Statute of Limitations. **Note to Section 1.**

In *Midland Rail. Co.* v. *Withington L. B.*, *ante*, p. 895, the money was paid on October 30th, 1880, so that the six months would expire on April 30th, 1881. On April 13th the plaintiffs' secretary wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the board were defeated the plaintiffs would expect a return of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882, after a month's notice had been given. It was held that the facts did not disclose a waiver by the defendants of the benefit of the section.

(*e*) It is the duty of a solicitor, instructed to negotiate with a public authority in respect of a claim for negligence, and failing satisfactory negotiations, to bring an action, to be acquainted with this enactment, and when the public authority has made an offer, to intimate to his clients that they must make up their minds to act before the expiration of the six months. For breach of this duty the solicitor must compensate his clients for the loss sustained by them by reason thereof (*Fletcher* v. *Jubb*, [1920] 1 K. B. 275). As to the computation of the six months, see *Freeman* v. *Read* (1863), 4 B. & S. 174; 32 L. J. M. C. 226; *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 56 J. P. 262; *Goldsmiths' Co.* v. *West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 68 J. P. 41. According to a decision of the Court of Session in Scotland, when the six months expires on a Sunday, the writ is too late if issued on the following Monday (*McNiven* v. *Glasgow Corporation*, [1920] S. C. 584). And see also *Gelmini* v. *Moriggia*, [1913] 2 K. B. 549, where, in principle, the same conclusion was arrived at. Limitation of time.

Where the cause of action is the doing of the act itself, the time runs from the act; where it is the resulting damage, it runs from the date when the damage results, and where the injurious act is continuing and causes continuous damage, the right of action also continues. See *Whitehouse* v. *Fellowes* (1861), 30 L. J. C. P. 305; 10 C. B. (N.S.) 765; *Backhouse* v. *Bonomi* (1861), 9 H. L. Cas. 503; 34 L. J. Q. B. 181; *Darley Main Colliery Co.* v. *Mitchell*, *ante*, p. 721, and *West Leigh Colliery Co., Limited* v. *Tunnicliffe*, *ante*, p. 721; *McClelland* v. *Manchester Corporation*, [1912] 1 K. B. 118; 76 J. P. 21. Where, by an Improvement Act, actions for any injury done by the commissioners under the Act were to be brought within six months *after the thing done*, and the defendants, proceeding under the Act to dig a sewer, cracked the walls of the plaintiff's house, it was held that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for so long a time as the crack continued (*Lloyd* v. *Wigney* (1830), 6 Bing. 489).

Where an excavation made by a local authority under a street for the purpose of laying a sewer was not properly filled in, and in consequence a subsidence of the plaintiff's land with injury to houses thereon took place, which began at a period more than six months before, and went on continuously down to, the commencement of an action by the plaintiff in respect of such subsidence, it was held, on the authority of *Darley Main Colliery Co.* v. *Mitchell*, *ante*, p. 721, that the further subsidence, which took place within the six months before action, constituted a distinct cause of action in respect of which the action was maintainable, notwithstanding the provisions of s. 264 of the P. H. A., 1875 (*Crumbie* v. *Wallsend L. B.*, [1891] 1 Q. B. 503; 55 J. P. 421). And see, to the same effect, *Fairbrother* v. *Bury R. S. A.* (1889), 37 W. R. 544.

A plaintiff was injured on June 17th, 1901, in consequence of an alleged act of misfeasance done by the defendants' servants some few days previously, and, whilst still suffering from her injuries, brought her action on October 8th, 1902; it was held that the action was not maintainable, on the ground that the words "continuance of injury or damage" refer only to those cases where there is a continuing cause of action (*Carey* v. *Bermondsey Borough Council* (1903), 67 J. P. 111). See also *Copley* v. *Leeds Corporation* (1904), 68 J. P. 196. It has been held in Scotland also that a mere

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continuance of the injurious effects or damage caused by an accident is not a "continuance of injury or damage" (*Spittal* v. *Glasgow Corporation* (1904), 6 F. 828). In *Harrington* (*Earl of*) v. *Derby Corporation*, [1905] 1 Ch. 205; 69 J. P. 62, where damages were claimed for pollution of a river, BUCKLEY, J., said: "The defendants contend that, having regard to s. 1 of the Public Authorities Protection Act, 1893, the plaintiffs can recover damages for no longer period than six months before the issue of the writ. To determine this point it is necessary to ascertain the meaning of the words in the section, 'in case of a continuance of injury or damage.' It cannot be disputed that for one cause of action all damages incident to it must be recovered once and once only, so that, for instance, if by the removal of the soil the defendant causes the walls of the plaintiff's house to crack, the plaintiff's cause of action is one and one only, and that none the less because the house does not at once show all the damage done to it, but manifests subsequently by degrees that the damage had been done. Upon this *Lloyd* v. *Wigney* (*ante*, p. 897) was cited, being a case upon the words of an Act which provided that an action must be brought within six calendar months 'after the thing done.' But if the result of the act is that one damage is done to-day and another subsequently, there is nothing to prevent a fresh action *toties quoties* fresh damage is inflicted (*Darley Main Colliery Co.* v. *Mitchell* (1886), 11 App. Cas. 127; 51 J. P. 148). If as the result of an act done to-day damage results a year later, the cause of action arises, not at the date of the act, but a year later when damage results. No cause of action arises from the act if it at that date created no damage. The right of action arises, not from the act, but from the resulting of damage from the act. *Backhouse* v. *Bonomi* (1861), 9 H. L. Cas. 503, established that proposition. There is, however, a further case with which this action is particularly concerned, viz., a continuing act which produces subsequently from day to day a recurrent damage. There is thus created within the principle which I have stated a fresh cause of action every day, and this, I conceive, is what is referred to in the section by the words 'in case of a continuance of injury or damage.' The words do not mean or refer to a damage inflicted once and for all which continues unrepaired, but a new damage recurring day by day in respect of an act done, it may be, for once and for all at some prior time, or repeated, it may be, from day to day. In such a case there is what CHANNELL, J., in *Carey* v. *Bermondsey Borough Council* (1903), 67 J. P. 111, calls a continuing cause of action. Where this is the case I think that, within s. 1 of the Public Authorities Protection Act, an action will lie when instituted six months next after the ceasing of the continuing injury or damage. That is, I think, the present case. These plaintiffs are therefore, I think, entitled to recover for a greater period than six months, and up to the period of six years limited by the Statute of Limitations."

In a later case where the defendants had, when pumping at a pumping station, polluted a stream by repeatedly pouring into it engine oil and grease during a period of three or four years prior to the date of the action, Lord ALVERSTONE, C.J., held that the plaintiffs could not recover damages for pollution caused more than six months before action brought (*English* v. *Metropolitan Water Board*, *ante*, p. 74).

The decision in *Harrington* (*Earl of*) v. *Derby Corporation*, *supra*, was followed in *Hague* v. *Doncaster R. D. C.* (1908), 73 J. P. 69; 100 L. T. 121 (animals poisoned by pollution of a river); and in *Att.-Gen.* v. *Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1, a periodical influx of sewage from a sewer remaining unrepaired was held to be a continuing cause of action. See also *Hart* v. *St. Marylebone Borough Council* (1912), 76 J. P. 257; 10 L. G. R. 502, as to a failure to repair a sewer and so support a road repairable by the plaintiffs being a "continuing wrong." For a case where the nuisance complained of had admittedly ceased more than six months before action and the statute was held applicable, see *Barnett* v. *Woolwich Borough Council* (1910), 74 J. P. 441. "The net result of the authorities appears to be that in order to come within the words of the section (as to continuance of damage) there must be a continuing breach of duty together with a continuing damage," *per* MCCARDIE, J., in *R.* v. *Marshland, etc., Commissioners*, [1920] 1 K. B., at p. 173. For a case where the court held that there was a continuing injury and damage, see *Boynton* v. *Ancholme Drainage Commissioners*, [1921] 2 K. B. 213; 85 J. P. 33.

In *Cree* v. *St. Pancras Vestry*, *ante*, p. 893, it was held that the six months ran from the date of the expenditure of the money, because although it was not paid into the authority's own hands and kept by them as in *Midland Rail. Co.* v. *Withington L. B.*, *ante*, p. 895, yet it was paid in consequence of their request made in pursuance of the Act.

A man was convicted on February 11th for neglecting to have his children vaccinated, and, the fines not being paid, the magistrate issued a distress warrant

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nder which the plaintiff's goods were distrained on April 17th. After quashing the onviction, the plaintiff, on August 26th, brought an action for damages for illegal istress; it was held that the trespass to his goods by the distress was "the act omplained of" and not the conviction, and that, therefore, the action was brought n time (*Polley* v. *Fordham* (No. 1), [1904] 2 K. B. 345; 68 J. P. 321). In *Turley* . *Daw* (1906), 94 L. T. 216; 22 T. L. R. 231, however, it was held in action against he high bailiff of a county court by a plaintiff who had been arrested under a com- ittal order founded on a judgment summons never served upon him, that the six nonths ran not from the date of arrest but from the date when the bailiff wrongly nformed the court that he had duly served the summons.

A plaintiff alleged that a highway authority had pulled down a fence erected by im round a roadside waste, and claimed such waste. He asked for a declaration nd an injunction against trespassing. It was held that the action was barred at he expiration of six months from the pulling down of the fence (*Offin* v. *Rochford R. D. C.*, [1906] 1 Ch. 342; 70 J. P. 97).

In an action for compensation awarded in respect of damage occasioned by the xercise of the powers of the Metropolis Management Acts, it was held to be no efence that the action was commenced more than six months after the damage vas sustained, as s. 106 of the Metropolis Management Act, 1862, did not apply o such a claim, and still less to an action on an award made upon such claim (*Delany* . *Metropolitan Board of Works* (1867), L. R. 3 C. P. 111; 31 J. P. 788; followed by DAY, J., in *Moreton* v. *Alfreton* (unreported), May 6th, 1898). See also cases as to ompensation claims in note (*b*), p. 891, *ante*. In the case of an action upon an award f compensation for injurious affection of land, the time under the general Statutes of imitation runs from the date of the award, not from the date of the execution of the vorks complained of (*Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 83).

A plaintiff, whose houses were about to be closed as insanitary without compensa- ion, complained that four years before the defendants had failed to pull down such ouses when condemned by a jury and to compensate her in respect thereof, as re- uired by a local Act; it was held that under the circumstances there was no con- inuing injury, for she had at the time elected to accept the *status quo* and not compel hem to proceed (*Merrick* v. *Liverpool Corporation*, [1910] 2 Ch. 449; 74 J. P. 445).

A Divisional Court held that the six months' limit under the provision in the text uperseded the twelve months provided for in the Fatal Accidents Act, 1846 ("Lord ampbell's Act"), and applied to actions brought under that Act (*Markey* v. *Tolworth oint Isolation Hospital District Board*, [1900] 2 Q. B. 454; 64 J. P. 647), but in *British Electric Railway Co., Ltd.* v. *Gentile*, [1914] A. C. 1034, the decision in *Markey's case* was disapproved. An action under that Act can only be maintained y the representative of a deceased person, where that person could, if alive, have imself maintained an action in respect of his injuries against the local authority. A plaintiff's husband met with an accident owing to the negligence of the defendants n the execution of a public duty. In consequence of the injury then received he ied two years afterwards without having brought an action against the defendants. Within six months after his death the plaintiff, as his personal representative, brought n action against the defendants; it was held that it could not be maintained, inasmuch s the right of action of the deceased, if alive, would have been barred by s. 1 (a), *upra* (*Williams* v. *Mersey Docks and Harbour Board*, [1905] 1 K. B. 804; 69 J. P. 96). See also *Gawley* v. *Belfast Corporation*, [1908] 2 I. R. 34, where the injured an had issued a writ before his death.

An action was brought against a local authority to recover expenses caused by xtraordinary traffic on a highway, but it was not commenced within six months of he damage being done. By s. 12 (1) (b) of the Locomotives Act, 1898, proceedings or the recovery of expenses of extraordinary traffic are to be commenced within welve months after the damage has been done; it was held that the authority was ntitled to the protection of the Act of 1893 (*Kent C. C.* v. *Folkestone Corporation* 1904), 68 J. P. 590; 20 T. L. R. 780). The decision in this case was reversed on ppeal on another ground; but so far as regards the point for which it is here cited, was approved. See *Kent C. C.* v. *Folkestone Corporation*, *ante*, p. 892. *Cf.*, how- ver, *Lanarkshire District Committee* v. *Airdrie Water Trustees* (1906), 8 F. 777.

(*f*) A judgment by consent was held to be a judgment "obtained" within the Solicitor and meaning of this provision, and to carry costs as between solicitor and client unless client costs. herwise agreed between the parties (*Shaw* v. *Hertfordshire C. C.*, [1899] 2 Q. B. 32; 63 J. P. 659); but in *Aird* v. *Tarbert School Board* (1906), 44 Sc. L. R. 26,

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Lord PEARSON doubted whether the provision applied where judgment is entered by consent. But a defendant does in substance obtain a judgment within the meaning of the section so as to entitle himself to solicitor and client costs, if an order is made dismissing the action for want of prosecution (*Gilbert* v. *Gosport U. D. C.*, [1916] 2 Ch. 587; 81 J. P. 89). So also where the court held that an action was useless and an abuse of legal process (*Webster* v. *Bakewell R. D. C.* (1916), 86 L. J. Ch. 89; 80 J. P. 437). But the court will not stay proceedings in an action on the ground that it has not been brought within six months as required by this Act (*Wright* v. *Prescott U. D. C.* (1916), 86 L. J. Ch. 221; 81 J. P. 43).

In a Scotch case it appeared that in an action against a public body for injury caused by the negligence of their servant, the Act was not pleaded. The defenders succeeded in the action and moved for their expenses to be taxed as between agent and client. It was held that it was competent to found on the Act with regard to expenses though it was not pleaded on the record: but that to entitle a public authority to take advantage of the Act the authority must either itself aver, and if necessary prove, that the act complained of was done in the execution of a public duty, or else it must be able to point to averments by the other party to that effect; and that as neither of these conditions was fulfilled, the expenses awarded fell to be taxed only as between party and party (*Hunter* v. *Dundee Water Commissioners*, [1920] S. C. 628).

Notwithstanding the use of the word "shall" in this provision, there is power for good cause to deprive the defendants of costs under R. S. C., Order LXV., r. 1: see *Bostock* v. *Ramsey U. D. C.*, [1900] 2 Q. B. 616; 64 J. P. 660 (overruling on this point *Cree* v. *St. Pancras Vestry*, [1899] 1 Q. B. 693; and *Roberts* v. *Mayor, etc. of Wrexham* (1897), 102 L. T. Newsp. 395 (a county court case)); *Aird* v. *Tarbet School Board* (1906), 44 Sc. L. R. 223; *East* v. *Berkshire C. C.* (1912), 76 J. P. 355; 106 L. T. 65; *Att.-Gen.* v. *West Ham Corporation*, p. 896, *ante*. But otherwise no special direction is necessary for taxation as between solicitor and client, nor need the judgment show upon the face of it that the action was one falling within the Act (*North Metropolitan Tramways Co.* v. *London C. C.*, [1898] 2 Ch. 145; 62 J. P. 488).

This Act has not repealed s. 118 of the County Courts Act, 1888, so far as actions against public authorities are concerned, and, therefore, where an authority are successful defendants in county court proceedings, their costs must be taxed as between solicitor and client according to the county court scale (*Tory* v. *Dorchester Corporation*, [1907] 1 K. B. 393; 71 J. P. 88).

Where the plaintiff failed on one issue, but otherwise succeeded, he was allowed his costs of the action as between party and party, but the defendants were allowed costs of the issue on which they succeeded as between solicitor and client, the two sets of costs to be set off (*Roberts* v. *Gwyrfai R. D. C.*, [1899] 1 Ch. 583; 63 J. P. 181).

In *Leckhampton Quarries Co., Ltd.* v. *Ballinger and the Cheltenham R. D. C.* (1904; 68 J. P. 464; 20 T. L. R. 559, the plaintiffs claimed a declaration that their land was not subject to five alleged public rights of way. They succeeded as to the most important, but failed as to the remaining four, which were much less important. The judge gave them their general costs of the action, except so far as they had been increased by the issues upon which they had failed, and on those issues the defendants were given their costs as between solicitor and client. Upon a motion to vary the order (69 J. P. 54), the defendants asked for the general costs of the action as between solicitor and client, except so far as they were increased by any issue upon which they had failed, and contended in support that whenever there are several causes of action combined in one action or proceeding, then if the defendants, being a public authority, succeed as to any one of those causes of action, the result of the statute is that they are entitled to the whole costs of the action except so far as increased by any matter on which they have failed. The judge dismissed the motion on the ground that the plaintiffs had substantially succeeded in their action, and that therefore the case was brought within the ordinary rule that, when a plaintiff has substantially succeeded, he gets the general costs of the action except so far as they have been increased by any issues upon which he has failed. An appeal from this decision was dismissed (69 J. P. 377; 93 L. T. 93).

Tender of amends.

(*g*) Tender of amends is no answer at common law to a claim for unliquidated damages, nor is the common law altered in this respect by the Judicature Acts (*Davy* v. *Richardson* (1888), 21 Q. B. D. 202). Where a statute makes a tender of amends a sufficient answer to an action, it is not necessary for the defendant to pay the money into court unless the statute requires it in addition to the tender (*Jones* v. *Goodrich* (1842), 9 M. & W. 736: *per* PARKE, B.). On this principle it would seem that R. S. C. Order XXII., r. 3, is not applicable to cases of plea of tender under this Act. An offer

f compensation under the P. H. A., 1875, s. 308, where the defendants dispute the laintiff's title, does not amount to a sufficient tender (*Cleckheaton U. D. C.* v. *Firth* 1898), 62 J. P. 536; 42 Sol. J. 669). **Note to Section 1.**

In *Smith* v. *Northleach R. D. C.*, [1902] 1 Ch. 197; 66 J. P. 88, the defendants paid noney into court in respect of one issue out of several with a denial of liability. The plaintiff proceeded with the action for some time afterwards, but ultimately accepted he sum paid into court in satisfaction of all the issues. She recovered her costs of he one issue up to the date of payment in, and the defendants obtained party and party costs of the other issues, and also costs of the one issue after payment in, the court holding that they were not entitled to solicitor and client costs from the date of payment in, inasmuch as s. 1 (c) is confined to cases in which an action is "proceeded with" to judgment, and does not apply to a discontinuance under Order XXVI., r. 1, where money is paid into court under Order XXII., with denial of liability and not in satisfaction.

The discretion which the trial judge possesses of depriving a successful defendant of costs for good cause so far as s. 1 (b) is concerned, is apparently not exercisable so far as s. 1 (c) is concerned: see *per* VAUGHAN WILLIAMS, L.J., in *Bostock* v. *Ramsey U. D. C.*, [1900] 2 Q. B. 616; 64 J. P. 660). It has already been pointed out that the Act does not apply in the case of an application for a certiorari to quash an auditor's surcharge. An application in such a case to tax the auditor's costs as between solicitor and client was therefore refused (*Roberts* v. *Battersea Borough Council* (1914), 78 J. P. 265).

(*h*) Therefore, this section will not apply to proceedings against a local authority under the P. H. A., 1875, s. 299, *ante*, p. 632.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies— Repeal.

(a) the proceeding is to be commenced in any particular place; or

(b) the proceeding is to be commenced within any particular time; or

(c) notice of action is to be given; or

(d) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event; or

(e) the defendant may plead the general issue;

and in particular there shall be so repealed the enactments specified in the Schedule to this Act to the extent in that Schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act (*a*).

(*a*) The Schedule contains a long list of repealed enactments, and is here set out only in so far as it repeals portions of statutes included in the present Work. Section 24 of the Municipal Corporations Act, 1882, which is not included in the Schedule, is not repealed by this Act (*Humphriss* v. *Worwood* (1894), 64 L. J. Q. B. 437).

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament (*a*), when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding. Saving as to Scotland.

(*a*) The Public Health (Scotland) Act, 1897, is such an Act (*Montgomerie & Co., Ltd.* v. *Haddington Magistrates*, [1908] S. C. 127).

Section 4. **4.** [*Commencement of Act.*]

Short title. **5.** This Act may be cited as the Public Authorities Protection Act 1893.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Title.*
. . .	. . .
26 *Geo.* 3, *c.* 71 - - - *in part.*	*The Knackers Act*, 1786— *in part; namely,*— *Section eighteen.*
. . .	. . .
1 & 2 *Will* 4, *c.* 32 - - *in part.*	*The Game Act*, 1831— *in part; namely,*— *Section forty-seven.*
. . .	. . .
38 & 39 *Vict. c.* 55 - - *in part.*	*The Public Health Act*, 1875— *in part; namely,*— *Section two hundred and sixty-four.*
. . .	. . .

THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

An Act to make further provision for Local Government in England and Wales. [5th March 1894

PART I. (*a*)

PARISH MEETINGS AND PARISH COUNCILS.

Constitution of Parish Meetings and Parish Councils.

* * * * *

(*a*) Part I. is outside the scope of the present Work, except in so far as expre reference is therein made to district councils, or in so far as the powers of a pari council may be conferred on an urban district council under s. 33, *post*, p. 943. On those portions of it which concern district councils are printed.

Except where otherwise stated italicised words were repealed by the S. L. R. A 1908.

Use of school-room. **4.**—(1) In any rural parish in which there is no suitable public roo vested in the parish council or in the chairman of a parish meeting an the overseers which can be used free of charge for the purposes in th section mentioned, the parochial electors and the parish council sha be entitled to use, free of charge, at all reasonable times, and after reaso able notice, for the purpose of—

(a) the parish meeting or any meeting of the parish council;

(b) any inquiry for parochial purposes by the Local Government Board or any other Government Department or local authority; or

(c) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the Allotments Act, 1890, or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act; or

(d) the candidature of any person for the district council or the parish council; or

(e) any committee or officer appointed, either by the parish meeting or council or by a county or district council, to administer public funds within or for the purposes of the parish

any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate:

Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house, nor authorise any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

This sub-section only concerns district councils to the extent of clauses (d) and (e). Possibly the latter clause may apply to meetings of a parochial committee appointed under the P. H. A., 1875, s. 202, *ante*, p. 467.

In reply to applications under s. 33 the L. G. B. informed many urban district councils that they were advised that the power to use free of charge certain rooms for the purposes specified in the section was not a power which could be conferred upon such a council.

(2) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

As to the costs of inquiries, see the P. H. A., 1875, s. 294, *ante*, p. 627.

(3) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a schoolhouse, by the Education Department, in the case of a room used for the administration of justice or police, by a Secretary of State, and in any other case by the Local Government Board.

The "Board of Education" (established by 62 & 63 Vict. c. 33) took the place of the "Education Department," and the Minister of Health (9 & 10 Geo. 5, c. 21) has now superseded the L. G. B.

Section 5.

Powers and Duties of Parish Councils and Parish Meetings.

Parish council to appoint overseers.

5.—(1) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians.

An assistant overseer may be appointed by resolution of the parish council signed by the chairman. The court will grant a writ of *mandamus* calling on the overseers to give the assistant overseer temporary possession of the rate books for the purpose of enabling him to perform the duties of his office (*R.* v. *Powell*, [1899] 1 Q. B. 396; 63 J. P. 84). When an assistant overseer appointed under this section is indicted for embezzling money collected from the ratepayers, he is rightly charged as the servant of the inhabitants, not of the parish council, and the property is well laid in the inhabitants (*R.* v. *Smallman*, [1897] 1 Q. B. 4; 61 J. P. 312). As to revocation of an appointment, see *Reynolds* v. *Hardington Mandeville Parish Council* (1898), 62 J. P. 363; and as to appeals against appointments of overseers, see *Bowden* v. *New Mills U. D. C.*, in notes to s. 33, *post*, p. 944.

In an urban district the Ministry of Health may, under s. 33, *post*, p 943, confer on the urban district council or on some other representative body within the district the power of appointing overseers and assistant overseers, and of revoking the appointment of assistant overseers. Where no such order is made overseers and assistant overseers in urban parishes are appointed as before 1894.

It has been held that the inhabitants in vestry have no power to increase the salary of an assistant overseer unless he resigns his office, or they revoke his appointment, or it terminates by effluxion of time (*Jones* v. *Lewis*, [1919] 1 K. B. 328; 83 J. P. 61). It was held also in the same case that in the case of an existing assistant overseer, the urban council who had obtained an order under s. 33, *post*, had no power to revoke his appointment and re-elect him at an increased salary.

(2) *As from the appointed day*—

(a) The churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and

(b) References in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and

(c) The legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Where an order is made under s. 33, *post*, p. 943, conferring upon the urban district council the powers of the overseers the churchwardens will automatically cease to be overseers. When application is made to the Ministry of Health by an urban council for the powers of s. 5 (2) (c), the Ministry require to be definitely informed (a) what property there is to which these provisions would apply, and (b)

when and how such property was acquired. It is also advisable to give a reference, if possible, to any correspondence which may have taken place at any time on the subject of this property either with the Board or their predecessors, the Poor Law Board.

Note to Section 5.

See, as to what is "ecclesiastical property," *St. George, Hanover Square* v. *Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153.

6.—(1) Upon the parish council of a rural parish coming into office, there shall be transferred to that council:

Transfer of certain powers of vestry and other authorities to parish council.

(a) The powers, duties, and liabilities of the vestry of the parish except—

(i) so far as relates to the affairs of the church or to ecclesiastical charities; and

(ii) any power, duty, or liability transferred by this Act from the vestry to any other authority:

(b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855: Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens *subsequently to the passing of this Act* shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate:

(c) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—

(i) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate; and

(ii) the provisions of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto; and

(iii) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them:

(d) The powers exerciseable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property.

The provisions of this sub-section do not concern district councils, except in so far as they give to parish councils powers which may be conferred on urban district councils under s. 33, *post*, p. 943. Where, however, such powers have been conferred, some decisions must be observed. On an appeal against a poor rate in a parish with a parish council, notice of appeal must be given to the parish council in lieu of the overseers (*R.* v. *Tewkesbury JJ.*, [1903] 1 K. B. 39; 67 J. P. 54). Whether in an urban parish in which the powers of overseers as to appeals against the

Note to Section 6.

poor rate have been transferred to the town council or urban district council by an Order of the L. G. B. notice should be given to that council was regarded as a doubtful question in *R.* v. *De Grey*, [1900] 1 Q. B. 521; 64 J. P. 375, and the safer course is to serve a notice both on the overseers and on the council. See also, as to appeals against county rates, *West Riding C. C.* v. *Middleton Parish Council*, [1906] 2 K. B. 157; 70 J. P. 326.

An award under an Inclosure Act of 1799 ordered that the herbage on the awarded public and private roads should be let by auction yearly by the surveyor of highways for the parish or such other person and under such restrictions and regulations as the occupiers of lands and tenements in vestry should appoint, and that the proceeds should go towards the repair of the roads in the parish. G. Drove (a private road) was one of the roads mentioned in the award and the herbage on it was always let annually by auction. Before 1894 it was let by the vestry and the proceeds applied in repairing the roads of the parish. After 1894 it was let by the parish council and the proceeds handed to the district council, who applied them in reduction of the amount due for road repair from the parish. An action was brought by the Attorney-General, on the relation of the district council, and by the district council, for damages for injury to the letting value of the herbage, alleged to be due to the defendants' wrongful depasturing the drove, and for an injunction. It was held that the title to the herbage was originally in the parishioners, or, under 59 Geo. 3, c. 12, s. 17, in the churchwardens and overseers as trustees for them, and was now, under the L. G. A., 1894, ss. 6 (1) and 67, in the parish council; and that the district council had no right of action (*Att.-Gen.* v. *Garner* (1907), 71 J. P. 357). See, however, as to this case, *Weir* v. *Fermanagh C. C.*, [1913] 1 I. R. 193.

The transfer of the powers, duties, and liabilities of the vestry do not make the parish council indictable for non-repair of highways (*R.* v. *Shipley Parish Council* (1897), 61 J. P. 488; 13 T. L. R. 486).

Under the Parochial Offices Act, 1861, overseers of a parish the population whereof exceeds 4,000 persons according to the census for the time being may, with the consent of the vestry and of the Ministry of Health, provide an office for the transaction of the business of the parish. In any case where the Act applies to a parish having a parish council the parish council, and not the overseers, are, by virtue of s. 6 (1) (c) (ii), *supra*, the authority who are to undertake the provision of the office. Under s. 8 (1) (a), under which a parish council have power to provide offices for any purposes connected with parish business.

In the case of applications by urban councils for the powers of a parish council under s. 6 (1) (c) (iii), the Ministry of Health require similar particulars to those mentioned in the note to s. 5, *ante*, p. 904. The L. G. B. have in many instances complied with such applications, and have also conferred powers under other paragraphs of the section.

In regard to the power as to closed churchyards, it will be observed that even the issue of an order under s. 33 will not give an urban council control over a closed churchyard unless and until a certificate is given under the Burial Act, 1855, s. 18. A churchyard may be wholly closed, closed subject to exceptions, or closed in part, but it is beyond the scope of this Work to discuss the cases to which the provision in the Act of 1855 does or does not apply. It should be noted, however, that by the Parochial Church Councils (Powers) Measure, 1921, which obtained the Royal Assent on July 1st, 1921, there was transferred to *the parochial church council* of every parish the care and maintenance of the churchyard (including a closed churchyard) with all rights possessed by the churchwardens to recover from overseers the cost of maintaining a closed churchyard. In pursuance of this Measure (which under the Church of England Assembly (Powers) Act, 1919, has the effect of an Act of Parliament) it is now for the parochial church council to issue a certificate if they find themselves without funds for maintenance purposes.

As regards Wales and Monmouthshire also the law has been altered. The Welsh Church Act, 1914, s. 8 (1) (a) (viii) provided that the Welsh Commissioners should by order, transfer to the "representative body," if so requested by that body, any closed burial grounds in Wales or Monmouthshire; if not so transferred, the burial ground of any parish was to be vested in the existing incumbent during his incumbency and on the determination thereof in the burial board, urban district council, parish council, or other local authority, according to circumstances, s. 8 (1) (b)

Note to Section 6.

Section 25 of the Act transferred to the council of every borough and urban district in Wales and Monmouthshire, except where a closed churchyard was transferred to the representative body, the obligations of churchwardens in the same terms as the L. G. A., 1894, transferred such obligations to parish councils, viz. wherever the expenses fell upon the poor rate. By the Welsh Church (Temporalities) Act, 1919, the Welsh Commissioners might postpone the transfer of property vested in them to local authorities and the latter are not bound to accept the transfer until the Secretary of State so directs.

With regard to fire engines, urban councils have all requisite powers under the P. H. A., 1875, s. 171 (2).

(2) A parish council shall have the same power of making any complaint or representation as to unhealthy dwelling or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890, but without prejudice to the powers of such householders.

Such complaints or representations as to unhealthy dwellings and obstructive buildings may be made by householders under ss. 31 and 38 (1), (2), respectively, of the Housing of the Working Classes Act, 1890.

By the Housing, Town Planning, etc. Act, 1919, 2nd Schedule, complaints or representations may also be made by justices of the peace.

A parish council is authorised by the present section to make similar complaints and representations, and presumably the same consequences will follow where the parish council so acts as follow a complaint or representation made by householders or justices of the peace. The rights of those householders or justices of the peace are not interfered with by the section.

* * * * * *

Additional powers of parish council.

8.—(1) A parish council shall have the following additional powers, namely, power—

(a) To provide or acquire buildings for public officers and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and

(b) To provide or acquire land for such buildings and for a recreation ground and for public walks; and

(c) To apply to the Board of Agriculture under section nine of the Commons Act, 1876 (*a*); and

(d) To exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections (*b*); and

(e) To utilise any well, spring or stream, within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person (*c*); and

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(f) To deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority; and

(g) To acquire by agreement any right of way, whether within their parish of an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof (*d*); and

(h) To accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and

(i) To execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church (*e*) or held for an ecclesiastical charity; and

(k) To contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

Many of the powers mentioned in this sub-section are already possessed by urban district councils under the Public Health and other Acts. See, as to offices, the P. H. A., 1875, s. 197; as to recreation grounds, *ibid.*, s. 164; P. H. A., 1890, ss. 44, 45; as to commons and open spaces, the Commons Acts and Open Spaces Acts; as to wells, springs, etc., the P. H. A., 1875, s. 51; as to ponds, ditches, etc., *ibid.*, ss. 48, 49, 91 *et seq.*; as to rights of way, *ibid.*, ss. 154, 175; as to combination with other councils, *ibid.*, s. 285; L. G. A., 1894, s. 57.

Urban councils have no distinct power to provide buildings for meetings (see, however, *infra*, as to this) unless they are a municipal corporation, to deal with ponds etc., *likely to be* prejudicial to health, to acquire rights of way *beyond their district*, or to accept gifts *except of such things as they have power to provide.* Many urban councils have therefore obtained Orders under s. 33 giving them the powers of s. 8 (1) (a), (b), (f), (g), (h), and of (i) and (k) so far as required for the purposes of preceding paragraphs.

In reference to a proposal submitted by an urban district council to use a piece of land as a site for a public hall, the L. G. B. stated that they gathered that the proposal was not to provide the hall in connection with the administration of the business of the district council, but as a separate building to be used for meetings of a public character, entertainments, etc. The Board were advised that the provision of such a building was not within the powers of the district council under the Public Health Acts, and that the fact that the council accepted a gift of land for the erection of a town hall would not enable them to provide and maintain such a building even if they were invested with all the powers of a parish council under s. 8 (1) (a).

The L. G. B. (now the Ministry of Health) apparently attach a restricted meaning to paragraph (i) in relation to (h). Thus, where an urban council who, not being a burial authority, had not the powers of the Burial Act, 1852, s. 41, asked for the powers of s. 8 (1) (h) and (i), in order to accept and maintain a hearse and hearse house, the Board seemed to take the view that paragraph (i) would not enable the council to incur expense in maintenance.

(*a*) See this section in App. I., *post*, Vol. II.

(*b*) See also as to the powers of a parish council with respect to commons and

Note to Section 8.

open spaces the Commons Act, 1899, and the Open Spaces Act, 1906, in App. I., *post*, Vol. II.

(*c*) It is not clear that this power if conferred on an urban authority would increase the powers already possessed by it under the P. H. A., 1875, s. 51, *ante*, p. 119.

A parish council cannot in their own name without the Attorney-General maintain an action to enforce a right of the inhabitants of the parish to the use of a well or spring (*Stoke Parish Council* v. *Price*, [1899] 2 Ch. 277 ; 63 J. P. 502 ; *cf. Sheringham U. D. C.* v. *Holsey*, [1904] W. N. 83 ; 68 J. P. 395). The Ministry of Health do not consider that a parish council are empowered by the paragraph to carry out any works of magnitude involving the laying of mains, the construction of reservoirs, etc. These are within the province of the district council, who also have the requisite powers for breaking up streets, charging of water rates, etc. See also sub-s. (3), *infra*.

(*d*) It may be important for an urban authority to possess this power. See first note.

(*e*) See as to the meaning of this term, *St. George, Hanover Square* v. *Westminster Corporation*, [1910] A. C. 225 ; 74 J. P. 153.

(2) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

Lettings and sales by parish councils may be under such circumstances that other provisions apply, such as s. 17 of the Burial Act, 1855, or a prescribing order of the L. G. B. or Ministry of Health under sub-s. (9), *infra*. The subject is outside the scope of this Work.

Wider powers than those conferred by this sub-section are already possessed by urban district councils under the P. H. A., 1875, s. 175. See that section, *ante*, p. 412, and notes thereto.

(3) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

This saving clause is inserted in consequence of the powers conferred upon the parish council with regard to water supply, and the sanitary works mentioned in sub-s. (1) (e) and (f), *ante*. See also note (*c*), *supra*.

(4) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.

Notice of any application under the Commons Act, 1876, in relation to any common within their district must also be served upon the district council. See s. 26 (2), *post*, p. 937. The Board of Agriculture has now been superseded by the Minister of Agriculture (9 & 10 Geo. 5, c. 91).

Powers for acquisition of land.

9.—(1) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the

Section 9.

provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

The powers of this section are never conferred upon an urban district council by the Ministry of Health under s. 33. Such a council has powers under s. 176 of the P. H. A., 1875, for the compulsory purchase of lands.

(2) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3) If on any such representation, *or on any proceeding under the Allotments Acts,* 1887 *and* 1890, a county council are satisfied that suitable land for the said purpose of the parish council *or for the purpose of allotments* (*as the case may be*), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

Italicised words repealed by the Small Holdings and Allotments Act, 1907.

If the county council are satisfied as to the matters referred to above, they are to proceed to give notices and to hold a public inquiry; it may be assumed that the notices will be given before the inquiry is held, though this, the natural, order of events is inverted in the text. The inquiry and the notices are to be "such as may be prescribed," *i.e.*, by Order of the L. G. B. (now the Ministry of Health) (see s. 75, *post*, p. 987, and General Order of January 7th, 1922). The inquiry must be public and held in the parish, and the notices must be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken. The inquiry will be held under the provisions of the Allotments Act, 1890, s. 3, which by sub-s. (13), *post*, p. 914, is incorporated with this section, viz. by such one or more members of the standing committee of the county council established under that section, or such officer of the county council or other person as the standing committee may appoint to hold the same. The person holding the inquiry will have the same powers as an inspector of the Ministry of Health when holding an inquiry, and the county council may make orders as to the costs of such inquiries. See sub-ss. (8), (12), *post*, pp. 913, 914, and the P. H. A., 1875, ss. 294—296, *ante*, pp. 627—629. All persons interested may attend the inquiry by themselves or their agents, and support or oppose the taking of the land. Counsel and expert witnesses are not to be heard except in such cases as may be prescribed (sub-s. (11), *post*, p. 913).

(4) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

An order made under this provision will be provisional only and cannot be acted on until it is confirmed under sub-s. (7), *post*, p. 912. This sub-section must be read with sub-s. (10), *post*, p. 913; the order is to incorporate not only the Lands Clauses Acts but the Railways Clauses Consolidation Act, 1845, ss. 77—85, and may

make the "necessary adaptations" of those provisions: further, any question of disputed compensation is to be dealt with under s. 3 of the Allotments Act, 1887; as to this, see note on sub-s. (10), *post*, p. 913.

Note to Section 9

(5) If the county council refuse to make any such order, the parish council, *or, if the proceeding is taken on the petition of the district council, then the district council*, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

Italicised words repealed by the Small Holdings and Allotments Act, 1907.

This sub-section gives a right of appeal to the Ministry of Health in any case where a county council has refused to make the order referred to in the last sub-section. Presumably the right will exist where the council has refused to direct an inquiry under sub-s. (3), not being satisfied as to the existence of the conditions there referred to, as well as when after such inquiry they have refused to make an order. It is understood that very few applications of this kind have been made.

It will be noticed that no right of appeal is given under this sub-section against an order made by a county council under the preceding sub-section. The remedy of any person aggrieved by the making of such an order is to memorialise the Ministry of Health against its confirmation under sub-s. (7), *infra*.

A petition to the Ministry of Health should set out the original representation or petition to the county council, and any evidence in support of it upon which the petitioners rely, whether it has been already adduced at an inquiry by the county council or not. Upon the presentation of such a petition the Ministry will, it appears, be bound to hold a local inquiry, and to any such inquiry, ss. 293—296 and sub ss. (1), (2) of s. 297 of the P. H. A., 1875, will apply (see sub-s. (8), *post*, p. 913); it will be conducted by an inspector of the Ministry. After the inquiry has been held, the Ministry may make the order, but it will be provisional only until confirmed under sub-s. (7), and will stand on the same footing as an order by the county council made under sub-s. (4). Any order under this sub-section, putting in force compulsory powers of purchasing land, will be an order "overruling the decision of the county council," and must, therefore, in all cases, be laid before Parliament.

The Act is silent as to when such an order is to be laid before Parliament. Neither is any power given to Parliament to deal with such an order, similar to the power given by the Judicature Act, 1875, s. 25, to present an address praying for the annulment of rules of court laid before them under that section. Apparently, the intention of the present provision is that such an order shall merely be brought to the attention of Parliament. A similar provision for the laying of orders before Parliament is contained in the L. G. A., 1888, s. 57, *ante*, p. 773.

The laying of the order itself before Parliament is in addition to the report by the Ministry of Health of proceedings under this section, which is required by s. 10 (11).

(6) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

The "order" here referred to includes an order made by the county council or by the Ministry of Health under the preceding sub-sections. As to the presentation of memorials and the final confirmation of orders, see the next sub-section. The copy of the order and the statement referred to in this sub-section is to be served "in the prescribed manner" (s. 75). See General Order of January 7th, 1922, which is set out in App. II., *post*, Vol. II.

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No order can be made under the last sub-section unless notice of its purport has been previously given in a local newspaper circulating in the district to which it relates (P. H. A., 1875, s. 297 (1), incorporated by sub-s. (8), *infra*).

(7) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

(a) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

(b) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

(c) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

The period for which the order is to lie with the L. G. B. (now the M. of H.) unconfirmed has been fixed as one month (Order of January 7th, 1922). During this period the Ministry will inquire as to whether the provisions of this section and the prescribed regulations have been in all respects complied with. If not satisfied as to this, they will presumably acquaint the promoters of that fact, and the promoters, if unable to satisfy the Board as to the question, will be obliged, if they desire to persist in their proceedings, to commence them *de novo*, or, at least, from the point at which the provisions of the section or the regulations were infringed.

If no memorial has then been presented the Ministry are bound, after the prescribed period has expired—and "after" must be taken to mean "immediately after"—to confirm the order.

At any time during the prescribed period a memorial may be presented to the Ministry by "some person interested," praying that the order shall not become law without further inquiry (see last sub-section). The expression "person interested" would include the owner, lessee, or occupier of the land proposed to be taken, and any other person who has a definite right of property in that land. The memorial should state the course of the proceedings which have been taken, and the evidence relied on in support of the prayer of the memorial. If a memorial be presented it will be the duty of the Ministry to hold a local inquiry (as to which see note on sub-s. (5), *ante*, p. 911, and sub-s. (8), *post*, p. 913); this inquiry must, it seems, be held in all cases where a memorial has been presented, even though the Provisional Order has been made by the Ministry itself upon appeal from the county council under sub-s. (5). This second inquiry by the same body seems to be an unnecessary proceeding, but the language of the present sub-section and of sub-s. (5) seems to leave no option to the Ministry for the provisions of this section, including sub-s. (7) (b), now under consideration, are to apply to an order made by the Ministry under sub-s. (5), "as if the order had been made by the county council." After (*i.e.*, "immediately after") such inquiry the Ministry must either confirm the order with or without amendment or disallow it.

This decision is final. If confirmed, the order (or if amended the order as so amended) becomes final, and has the effect of an Act of Parliament. Once confirmed, it cannot be questioned on the ground that the requirements of this Act have not been complied with, or that it is not within the powers of the Act.

The effect of the provisions of this and the preceding sub-sections in the case

land which is required for the purpose mentioned in this section, is to substitute r the established procedure by which land is acquired compulsorily for other public *quasi* public purposes, viz.: an Act of Parliament or a Provisional Order confirmed y Act of Parliament, another method which will undoubtedly be cheaper where the pposition to the taking of the land is not active, and which will at the same time ve opportunity to persons objecting to the taking of the land of putting their bjections before competent tribunals, and carrying their opposition as far as is stifiable for the protection of their interests.

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(8) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local nquiry held by the Local Government Board for the purposes of this ection, as if those sections and sub-sections were herein re-enacted, nd in terms made applicable to such inquiry.

See these sections, *ante*, pp. 627—630.

(9) The Order shall be carried into effect, *when made on the petition f a district council, by that council, and in any other case* by the county ouncil.

Italicised words repealed by the Small Holdings and Allotments Act, 1907.

(10) Any order made under this section for the purpose of the urchase of land otherwise than by agreement shall incorporate he Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adapta- ions, but any question of disputed compensation shall be dealt with in he manner provided by section three of the Allotments Act, 1887, and rovisoes (a), (b), and (c) of sub-section (4) of that section are incor- orated with this section and shall apply accordingly: Provided that n determining the amount of disputed compensation, the arbitrator shall ot make any additional allowance in respect of the purchase being ompulsory.

The Lands Clauses Acts are set out in App. I., *post*, Vol. II.

Sections 77—85 of the Railways Clauses Consolidation Act, 1845, relate to the ghts of owners of mines and minerals lying under or near a railway. These pro- isions are to be incorporated in orders made by a county council or of the M. of H. nder this section, "with the necessary adaptations."

As to the incorporated provisions of the Allotments Act, 1887, see note to sub-s. (13), *ifra*. The modification of those provisions by the proviso to this sub-section is of reat practical importance. See also the Acquisition of Land (Assessment of Com- ensation) Act, 1919.

(11) At any inquiry or arbitration held under this section the person r persons holding the inquiry or arbitration shall hear any authorities r parties interested by themselves or their agents, and shall hear itnesses, but shall not, except in such cases as may be prescribed, ear counsel or expert witnesses.

"Prescribed" means prescribed by Order of the L. G. B. (now the Ministry of ealth) (s. 75, *post*, p. 987).

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(12) The person or persons holding a public inquiry for the purpose of this section on behalf of a county council shall have the same power as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

By the next sub-section the Allotments Act, 1890, s. 3, is incorporated with this section as to the taking of land, and is to apply with the "prescribed adaptations." That section provides that "an inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee or such officer of the county council or other person as the standing committee may appoint to hold the same." Therefore the person or persons holding a public inquiry on behalf of the county council for the purpose of this section will be appointed by the standing committee of the county council, and will have the powers of inspectors of the Ministry of Health. As to these powers, see the P. H. A., 1875, s. 296, *ante*, p. 623.

As to the power to award costs of a person holding an inquiry under a statute which is silent as to costs, see *Liddall* v. *Ballingry Parish Council*, [1908] S. C. 1088 and cases there cited.

(13) *Sub-section* (2) *of section two, if the land is taken for allotments and whether it is or is not so taken*, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

Italicised words repealed by the Small Holdings Allotments Act, 1907.

The General Order of January 7th, 1922, provides that for the purposes of s. 9 of the Act the several provisions of the Allotments Acts, 1887 and 1890 (*a*), referred to in sub-s. (13) of s. 9 aforesaid, and of any enactments repealing and re-enacting the same with or without modification, shall be adapted in the form and manner set forth in the Schedule to this Order, and shall apply accordingly.

Schedule.

(1) In construing, for the purposes of Section 9 of the Act, the provisions of the Lands Clauses Acts as incorporated with the said Section, and the provisions of the said Acts and of Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845 (*b*) as incorporated with an Order which has been made and has become final under the said Section, the Act, together with any such Order, shall be deemed to be the Special Act; and the Parish Council, for any purpose for which the said Council are authorised to acquire land by agreement, or for any purpose in relation to which land authorised to be acquired otherwise than by agreement may be assured to the said Council, and the County Council carrying into effect, for such last-mentioned purpose, any such Order as is hereinbefore mentioned, shall respectively, as the case requires, be deemed to be the promoters of the Undertaking or the Company, and the word "land" in relation to any purpose for which the Parish Council are authorised to acquire land shall include pasture, arable, and other land, and any right of way or easement.

(2) Where land is purchased under an Order in pursuance of Section 9 of the Act otherwise than by agreement the following provisions shall apply:—

(*a*) The County Council and the Minister of Health shall not make an Order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the

(*a*) 50 & 51 Vict. c. 48 and 53 & 54 Vict. c. 65 (*b*) 8 & 9 Vict. c. 20.

property of a railway or canal company which is or may be required for the purposes of their undertaking:

(*b*) The County Council and the Minister of Health shall, in making an Order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.

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(3) For the purpose of the hiring of land by a Parish Council for a purpose for hich the said Council are authorised to acquire land, any person, or body of persons, r body corporate authorised to sell land to the said Council for such a purpose ıay, without prejudice to any other power of leasing, lease land to the Parish Council, ithout any fine or premium, for a term not exceeding thirty-five years.

(4) The County Council and the Minister of Health shall not make an Order in ursuance of Section 9 of the Act for purchasing any right to coal or metalliferous ore.

(5) Where a Parish Council are of opinion that any land or any part thereof cquired by the said Council in pursuance of Section 9 of the Act is no longer needed or the purpose for which the said land was acquired, or that some more suitable and is available, the said Council may, with the sanction of the County Council, nd subject to the provisions of sub-section (2) of Section 8 of the Act, sell or let uch land or part, or exchange the same for other land more suitable for the said urpose, and may pay or receive money for equality of exchange.

(6) The proceeds of any sale under clause 5 hereof of any land or any part of any and acquired by a Parish Council as aforesaid, and any money received by the said Council on any such exchange as aforesaid by way of equality of exchange, shall e applied in discharging, either by way of a sinking fund or otherwise, the debts nd liabilities of the said Council in respect of the land acquired as aforesaid, or in cquiring, adapting and improving other land for the purpose aforesaid, or shall be pplied for any other purpose which is approved by the Minister of Health; and the nterest thereon (if any) and any money received from the letting of the land may e applied in aid of the expenses of the said Council under the Act.

(7) Sections 128 to 132 (both inclusive) of the Lands Clauses Consolidation Act, 845 (*a*) (relating to the right of pre-emption of superfluous lands), shall apply upon ny sale of any land in pursuance of the foregoing provisions; but, save as aforesaid, he provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale f superfluous lands shall not be deemed to be incorporated in Section 9 of the Act, r in any Order made under that Section.

(8) All matters relating to the exercise and performance by a County Council f their powers and duties under Section 9 of the Act shall stand referred to the General Purposes Committee of the Council and the Council before exercising any uch powers and duties shall, unless in their opinion the matter is urgent, receive nd consider the report of the said Committee with respect to the matter in question, nd the Council may also delegate to the said Committee with or without restrictions r conditions, as they think fit, any of their powers under Section 9 of the Act.

(9) Where the County Council are satisfied that the circumstances are such as to ıstify them in proceeding under Section 9 of the Act the public inquiry mentioned ı sub-section (3) of the said Section shall be held by such one or more members of he said General Purposes Committee, or such officer of the County Council as the aid Committee may appoint to hold the same.

(14) Where the land is acquired *otherwise than for allotments*, it shall e assured to the parish council; *and any land purchased by a county ouncil for allotments under the Allotments Act*, 1887 *and* 1890, *and this ct, or any of them, shall be assured to the parish council, and in that case ections five to eight of the Allotments Act*, 1887, *shall apply as if the parish ouncil were the sanitary authority.*

Italicised words repealed by the Small Holdings and Allotments Act, 1907.

(*a*) 8 & 9 Vict. c. 18.

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(15) Nothing in this section shall authorise the parish council t acquire otherwise than by agreement any land for the purpose of an supply of water, or of any right of way.

See note (*c*) on p. 909, *ante*.

. . . . . .

(19) The expenses of a county council incurred under this sectio shall be defrayed in like manner as in the case of a local inquiry by county council under this Act.

See, further, as to expenses of inquiries by county councils, s. 72, *post*, p. 983.

* * * * * *

Footpaths and roads.

13.—(1) The consent of the parish council and of the district counc shall be required for the stopping, in whole or in part, or diversion, of public right of way within a rural parish (*a*), and the consent of th parish council shall be required for a declaration that a highway in rural parish is unnecessary for public use and not repairable at the publi expense (*b*), and the parish council shall give public notice of a resolutio to give any such consent, and the resolution shall not operate—

(a) Unless it is confirmed by the parish council at a meeting held nc less than two months after the public notice is given; nor

(b) If a parish meeting held before the confirmation resolve that th consent ought not to be given.

Forms for use under this sub-section will be found in the Encyclopædia of Form and Precedents, Vol. VI., at pp. 370 *et seq.*

In considering this section and the notes thereto, it should be borne in mi that the word "highways" in the Highway Acts includes "roads, bridges (not bei county bridges), carriageways, cartways, horseways, bridleways, footways, caus ways, churchways and pavements" (Highway Act, 1835, s. 5); and further th the powers and duties of the "vestry" of a parish are now transferred to the distri council, who are also the "surveyor" of highways for any parish (P. H. A., 187 s. 144, p. 253, *ante*, and s. 25 (1) of this Act, p. 933, *post*). As to who former constituted the "vestry" for these purposes, see *Wright* v. *Frant Overseers* (186 27 J. P. 645; 4 B. & S. 118.

Diversion and stopping up.

(*a*) Under the Highway Act, 1835, ss. 84—92, as amended by the provisions ju referred to, if a district (or borough) council deem it expedient that a highwa should be stopped up or diverted, they must request two justices to view the sam "Any other party" who desires to stop up or divert a highway must submit h proposal to the council; if they do not agree to the proposal, there is an end of th matter; if they do agree, they must request two justices to view, as before. If upo such view it appears to the justices that the way may be diverted with advantag or is unnecessary, they must direct the council's officer to fix notices at the place a by the side of each end of the highway from whence it is proposed to be diverted stopped up, and to advertise the same notice in a local newspaper for four successiv weeks, and to fix the like notice upon the church doors of every parish in which th highway lies for four successive Sundays. As to what notices are sufficient, s *R.* v. *Surrey JJ.* (1870), L. R. 5 Q. B. 466; *R.* v. *Surrey JJ.*, [1892] 1 Q. B. 86 56 J. P. 695; *R.* v. *Kent JJ.*, [1905] 1 K. B. 378; 69 J. P. 69; *R.* v. *Derby JJ* [1917] 2 K. B. 802; 81 J. P. 292. Upon proof that all the requirements of th Act have been complied with, the justices grant their certificate, stating the reasons for thinking that the highway should be diverted or is unnecessary, an such certificate is enrolled at quarter sessions. As to the matters to be stat in a justices' certificate, see *R.* v. *Wallace* (1879), 4 Q. B. D. 641; 43 J. P. 49 and as to what must be shown on the plan delivered to the justices certifyin see *R.* v. *Surrey JJ.*, [1908] 1 K. B. 374; 72 J. P. 53. Any person thinkin

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himself aggrieved by the proposed diversion or stopping up of the highway may appeal to quarter sessions by giving to the council fourteen days' notice in writing of such appeal (s. 88; and 12 & 13 Vict. c. 45; see *R.* v. *Maule* (1871), 41 L. J. M. C. 7; 35 J. P. 596); and upon such appeal a jury at sessions will determine whether the proposed diversion will be more commodious or whether the highway is unnecessary, and whether the appellant would be aggrieved by the diversion or stopping up (as to the effect of findings of the jury, see *Walker* v. *York Corporation*, [1906] 1 K. B. 724; 70 J. P. 270), and if the appeal is upon the ground of defects in the certificate of the justices, the court will decide as to its sufficiency (*R.* v. *Worcestershire JJ.* (1854), 23 L. J. M. C. 113; 3 El. & Bl. 447). If there is no appeal, or if the appeal fails, quarter sessions will make an order for the diversion or stopping up of the way. If the appeal succeeds, no such order will be made. For a fuller discussion of this subject and the numerous other decisions with reference thereto, see Pratt on Highways.

Discontinuance of repair.

(*b*) The proceedings relating to a declaration that a highway is unnecessary for public use and not repairable at the public expense will be found in the Highway Act, 1864, s. 21, and the Highways and Locomotives Amendment Act, 1878, s. 24.

Under the Act of 1864 such proceedings can only be taken by an authority which is the successor of a highway board. The proceedings are commenced by a request to two justices to view the highway, and thereupon the proceedings are to go on in like manner as proceedings under the Highway Act, 1835, for the stopping up or diversion of a highway with the necessary variations.

Under the Act of 1878 the proceedings can be taken by any authority liable to keep the highway in question in repair, and differ from those which may be taken under the Act of 1864. The authority make an application to the court of summary jurisdiction of the petty sessional division in which any parish in which the highway lies is situate that two justices of the court shall view the highway. If on such view the court is of opinion that the application should be proceeded with, they must appoint a time and place for hearing objections to the application, such appointment to be made by a month's public notice, and also by a month's notice to the owners and occupiers of all lands abutting upon the highway in question. The applicant authority must also give public notice of the appointed time and place by advertisement in a local newspaper once in each of the four weeks preceding the hearing, and by causing a copy of such notice to be affixed fourteen days before the hearing to the doors of every church and chapel in the parish in which the highway is situate, or in a conspicuous position near the highway, and the application cannot be entertained by the court unless the giving of this public notice is proved to its satisfaction. On the day and at the place appointed the court must hear any objections, and must either dismiss the application or make an order declaring the highway unnecessary for public use and that it ought not to be repaired at the public expense. If such an order is made the expenses of repairing the highway will cease to be defrayed out of any public rate. An appeal lies from such an order to quarter sessions. Under both Acts (1864 and 1878) a court of quarter sessions, upon the application of any person interested in the maintenance of the highway in respect of which such an order has been made and upon certain evidence, may direct that the liability to repair such highway at the public expense shall be revived.

(2) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

Maintenance of footpaths.

Public footpaths which are highways repairable by the inhabitants at large, are, of course, under the control of the highway authority of the place in which they are situate. That authority (which is now the district council) remain liable for the repair and maintenance of such of the footpaths mentioned in the text as are repairable by the inhabitants at large, even where a parish council has undertaken to repair and maintain them. Footpaths at the side of a public road, even if such road

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is not repairable by the inhabitants at large, are exempted from the power here given to a parish council.

The powers of this sub-section are readily granted by the M. of H. to any urban district council desiring them. See notes to s. 33.

It will be observed that a parish council (and an urban district council obtaining an order under s. 33) derive no power from this sub-section to compel a landowner to repair a footpath traversing his land. Neither can the council prevent a farmer from periodically ploughing up a footpath which has ordinarily been ploughed up. *Cf. Mercer* v. *Woodgate* (1869), L. R. 5 Q. B. 26; 33 J. P. 759; *Arnold* v. *Holbrook* (1873), L. R. 8 Q. B. 96; 37 J. P. 229. But see *Dennis & Son, Ltd.* v. *Good* (1919), 88 L. J. K. B. 388; 83 J. P. 110.

As regards stiles on footpaths the L. G. B. have expressed the opinion that, as a general rule, when an existing stile on a public footpath in a rural parish having a parish council is in so defective a state as to render it necessary for the enjoyment by the public of their right of using the path that such stile should be repaired, the parish council can execute the repairs. The same holds good with regard to gates, and bridges forming part of footpaths. As to the dedication of a highway subject to gates for farm purposes, see *Att.-Gen.* v. *Meyrick* (1915), 79 J. P. 515.

On the question of the power of a parish council to substitute gates for stiles the Board have expressed themselves favourably as to a parish council's powers, provided, however, that the consent of the landowner is obtained to any consequent enlargement of the rights of the public.

A parish council has no power to expend money for the repair of any part of a footpath situate outside the parish. The council can, however, combine with the parish council in which the part of the footpath requiring repair is situate for the purpose of keeping the whole length of footpath in order, and a joint committee may be appointed under s. 57 of the L. G. A., 1894, for the purpose of exercising the powers of a parish council under s. 13 (2) in respect of the footpath.

Public property and charities.

14.—(1) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

The powers hereby conferred upon a parish council may be conferred upon an urban authority by order under s. 33, *post*, p. 943. As to what is an ecclesiastical charity, see s. 75, *post*, at p. 986.

(2) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers.

The expression "parochial charity" is defined by s. 75, *post*, p. 986, to mean "a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes." The section also defines "ecclesiastical charity."

The effect of the last part of this sub-section is that the parish council can appoint

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trustees in the place of the churchwardens where they, whether joined with the overseers or not, are made trustees by the instrument creating a non-ecclesiastical charity (*Re Ross's Charity*, [1899] 1 Ch. 21 ; 63 J. P. 52).

The powers of a parish council under this sub-section may be conferred on an urban authority under s. 33, *post*, p. 943.

(3) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case ; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this subsection shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

The powers of a parish council under this sub-section may be conferred on an urban authority under s. 33, *post*, p. 943.

(4) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

(5) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

As to the meaning of this sub-section, see *Re Berkhamstead Grammar School*, [1908] 2 Ch. 25 ; 72 J. P. 273.

(6) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the churchwardens, and the names of the beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

(7) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one-half.

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as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

(9) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

Delegated powers of parish councils.

15. A rural district council may delegate to a parish council any power which may be delegated to a parochial committee under the Public Health Acts, and thereupon those Acts shall apply as if the parish council were a parochial committee, and where such district council appoint a parochial committee consisting partly of members of the district council and partly of other persons, those other persons shall, where there is a parish council, be or be selected from the members of the parish council.

See the P. H. A., 1875, s. 202, *ante*, p. 467, which enables a rural authority to appoint a "parochial committee" for certain purposes.

As to committees and joint committees of parish and district councils, see *post*, ss. 56, 57, pp. 970, 971.

Complaint by parish council of default of district council.

16.—(1) Where a parish council resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty (*a*) to enforce, and have failed so to do (*b*), or that they have failed to maintain and repair any highway in a good and substantial manner (*c*), the parish council may complain to the county council, and the county council, if satisfied after due inquiry that the district council have so failed as respects the subject-matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly.

(*a*) As to the meaning of this word, see *London C. C.* v. *Bermondsey Borough Council*, [1915] 3 K. B. 305.

(*b*) Up to this point the section follows the words of the P. H. A., 1875, s. 299, *ante*, p. 632. See also the Housing of the Working Classes Act, 1885, s. 7, *ante*, p. 731. Under the present Act the complaint is to the county council, not to the Ministry of Health.

(*c*) This was a new provision. It affords a method of enforcing the duty of repairing a highway in addition to that given by the Highways and Locomotives (Amendment) Act, 1878, s. 10, in App. I., *post*, Vol. II. On a complaint under this section,

Note to Section 16.

the county council will apparently have to decide whether the district council are liable to repair if the liability is disputed.

It would appear that in order to effect a "due inquiry," notice must be given to the district council of the complaint, and such council must be afforded an opportunity of explaining why they have not taken action, and that an order made without observing these requirements is not enforceable against the district council (*R.* v *Huntingdonshire C. C.* (1902), C. C. Times Supp. 44).

Reference might be made to *R.* v. *West Sussex C. C.* (1921), 85 J. P. 162, a case decided in connection with the hearing of a similar complaint under s. 10 of the Highways and Locomotives (Amendment) Act, 1878.

Section 63 (2), *post*, p. 979, makes provision for the mode of making such complaints if a district is situate in more than one county.

(2) Upon any complaint under this section the county council may, instead of resolving that the duties and powers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board.

See the sections above referred to, *ante*, pp. 632—637. It will be seen that under s. 299 complaint of a default by a district council as to matters specified in that section may be made to the Ministry of Health by any person. The remedy under that section is in no way affected by the above two sub-sections. But a further remedy is given; a parish council may make a complaint to the county council as to the same matters and also as to a default in maintaining and repairing a highway; and by s. 19 (8), in a parish where there is no parish council, the same power of making a complaint is conferred upon the parish meeting. Where such a complaint has been made to a county council, that body may act in one of two ways: (i) they may, under sub-s. (1), resolve to exercise the powers of the district council in respect of the matter of the complaint. In this case the provisions of s. 63, *post*, p. 978, will apply; notice of the resolution of the county council is to be sent to the district council and to the Ministry of Health; the county council may raise a loan for the purpose of the powers transferred, and their expenses are to be a debt from the district council to the county council; or (ii) they may, instead of taking over the duties and powers of the defaulting district council, take one of the courses open to, but not usually adopted by, the Ministry of Health under s. 299 for securing the execution of the works, and in this case they are to have the powers of the L. G. B. under ss. 299—302.

See s. 63 (2), *post*, p. 979, as to the mode of making complaints in the case of a rural district situate in more than one county.

(3) Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.

The powers of a district council as to sewerage and water supply are contained in the P. H. A., 1875, ss. 13—34 and 51—70, *ante*, pp. 45—96, 119—149. As to the expression "contributory place" see *ibid.*, s. 229, *ante*, p. 510, and notes thereto.

It may be presumed that where a notice of a plan for sewerage or water supply has been given to a parish council under this clause, that council will have power to state objections to those plans, and, generally, to make representations to the district council regarding them. Nothing is said as to what is to be the effect of a

Note to Section 16. failure to give the notice. And in any case it is rather late to receive notice just before a contract is signed and possibly after the Ministry of Health have passed the scheme.

Parish officers and parish documents.

17. . . .

(5) When a parish council act as a parochial committee by delegation from the district council they shall have the services of the clerk of the district council, unless the district council otherwise direct.

As to a parish council acting as a parochial committee by delegation from the district council, see *ante*, s. 15, and the P. H. A., 1875, s. 202, p. 467, *ante*.

. . . . . .

(8) The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the Church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this sub-section, and any difference as to custody or access shall be determined by the county council.

The powers of a parish council under this sub-section may be conferred on an urban authority under s. 33, *post*, p. 943.

A parish council passed a resolution that documents relating to tithes in the possession of the incumbent should be placed in their custody, and such resolution was confirmed by an order of the county council. It was held that justices had power under the Tithe Act, 1860, s. 28, to make an order for the removal of such documents from the custody of the incumbent to that of the parish council (*Lewis* v. *Poole*, [1898] 1 Q. B. 164 ; 61 J. P. 776). An order of the county council as to the custody of the tithe apportionment map, which forms a part of the apportionment, does not bind the justices, on an application under s. 28 of the Tithe Act, 1860, to make the same order as to the custody of the map, *per* DARLING, J., on the ground that an order of the county council dealing with only a part of the tithe apportionment is invalid ; and *per* AVORY and SHEARMAN, JJ., on the ground that s. 28 of the Act of 1860 has not been impliedly repealed by s. 17 (8) and (9) of the Act of 1894, but the county council and the justices have concurrent jurisdiction, though due weight should be attached by the justices to any prior order made by the county council (*Fox* v. *Pett*, [1918] 2 K. B. 196 ; 82 J. P. 252).

* * * * * *

(9) Every county council shall from time to time inquire into the manner in which the public books, writings, papers and documents under the control of the parish council or parish meeting are kept with a view to the proper preservation thereof and shall make such orders as they think necessary for such preservation and those orders shall be complied with by the parish council or parish meeting.

Provisions as to small parishes.

19. In a rural parish not having a separate parish council, the following provisions shall, *as from the appointed day*, but subject to provisions

made by a grouping order, if the parish is grouped with some other parish or parishes, have effect : Section 19.

. . . . . .

(8) The provisions of this Act with respect to the stopping or diversion of a public right of way, or the declaring of a highway to be unnecessary and not repairable at the public expense, and with respect to a complaint to a county council of a default by a district council, shall apply, with the substitution of the parish meeting for the parish council.

See s. 26 (4), *post*, p. 938.

. . . . . .

PART II.

GUARDIANS AND DISTRICT COUNCILS.

Election and qualification of guardians.

20. *As from the appointed day* the following provisions shall apply to boards of guardians :

(1) There shall be no ex officio or nominated guardians :

(2) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector (*a*) of some parish within the union, or has during the whole of the twelve months preceding the election resided (*b*) in the union or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not (*c*), is qualified to be elected a councillor for that borough (*d*), and no person shall be disqualified by sex or marriage for being elected or being a guardian (*e*). So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed (*f*) :

Before this Act the guardians for the rural parishes in a union were the rural sanitary authority for the rural sanitary district of the union (see P. H. A., 1875, s. 9). Now rural district councillors are the guardians for the parishes they represent, but the two bodies are entirely distinct. It is necessary, however, to print this section, for by s. 24 (4), *post*, p. 931, the provisions of the Act with respect to the qualification, election, term of office, and retirement of guardians apply to the district councillors of a rural district.

(*a*) The Representation of the People Act, 1918, 7 & 8 Geo. 5, c. 64, s. 42, provides that the parliamentary and the local government franchises enacted by that Act shall take the place of all parliamentary, and as far as respects local government elections within the meaning of the Act, of all local government franchises existing at the time of the passing of the Act, and that the provisions of the Sixth Schedule to the Act with respect to the adaptation of Acts shall have effect for the purpose of adapting the law to the provisions of the Act. The Sixth Schedule provides by clause 2 that a reference to local government electors registered under the Act shall, so far as local government elections and the right to vote at any such elections are concerned, be substituted for any reference in any other Act to local government electors, county electors, burgesses, parochial electors or other persons entitled to vote at a local government election, by whatever name called, and local government

Note to Section 20.

electors so registered shall for all purposes whether statutory or not, be in the same position as any such local government electors, county electors, burgesses, parochial electors or persons. Clause 3 of the same schedule provides that a reference to the register kept in pursuance of that Act shall, so far as it relates to the local government register of electors, be substituted for the local government register of electors, the county register, the register of parochial electors, and for the register of persons entitled to vote at a local government election, by whatever name called. Clause 7 enables the Ministry of Health to make such further adaptations in the provisions of any Act (including any local act and any Act to conform a provisional order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act), as may seem to them necessary to make those provisions conform with the provisions of that Act, and that any order as made shall operate as if enacted in that Act. It should be added that by s. 41 of the Act it is provided that the expression "local government area" means the area for which any county council, municipal borough council, district council, board of guardians, parish council, or any other body elected at the time of the passing of the Act by persons on the local government register or on the register of parochial electors is elected: and that the expression "local government election" means an election for any such council, board, or body.

The effect of these provisions stated shortly is that a parochial elector is a person whose name is on the local government register prepared under the Act of 1918.

(*b*) It has been said that the meaning of the word "residence" must be determined with reference to the purpose of the statute in which it is used (*Blackwell* v. *England* (1858), 27 L. J. Q. B. 124). In the text it appears to mean a personal dwelling within the union, as distinguished from the mere occupation of property. See *R.* v. *Bredwardine*, [1920] 1 K. B. 47; 83 J. P. 269. For some purposes a person may have more than one residence; thus he may have houses in different places, each of which may be called his residence (*Walcot* v. *Boyfield* (1854), 18 Jur. 570; 1 Kay, 534); and for purposes of this Act, a man can reside in more than one place (*Stanford* v. *Williams* (1899), 80 L. T. 490; 15 T. L. R. 316).

Further, the residence must be during the whole of the twelve months preceding the election. This provision resembles that in the Municipal Corporations Act, 1882, s. 9 (now repealed), and as but for the passing of the 48 & 49 Vict. c. 9 the letting of a house furnished for any part of the twelve months disqualified a person from being a burgess, so any similar letting would disqualify a person from being elected or being a guardian, if his only qualification were residence. But a mere temporary absence with intention to return, and a right to return at any time, does not defeat a qualification by residence (*Stanford* v. *Williams*, *supra*).

By the Members of Local Authorities Relief Act, 1900, an officer or soldier of the auxiliary forces or of the reserve forces on active service, or on service beyond the seas, is not by reason only of his absence on that service disqualified as a member of any district council. See that Act, *post*, p. 1010.

(*c*) The provisions of this Act relating to guardians apply to county boroughs (see s. 30, *post*, p. 943).

(*d*) The qualification of the councillor of a borough depends upon the Municipal Corporations Act, 1882, s. 11 (as amended by the Representation of the People Act, 1918), and s. 12; the County and Borough Councils (Qualification) Act, 1914, and the Representation of the People Act, 1918, s. 10. See note (*e*), *infra*.

Referring to this sub-section the L. G. B. expressed the following opinion:—"There are three alternative qualifications for the office of guardian mentioned in s. 20 (2) of the Act. A person will be qualified if—(1) he is a parochial elector of some parish within the poor law union, or (2) he has during the whole of the twelve months preceding the election resided in the union, or (3) in the case of a guardian for a parish wholly or partly situate within the area of a borough, he is qualified to be elected a councillor of that borough. Clergymen and ministers of a dissenting congregation could not, in view of s. 12 (1) of the Municipal Corporations Act, 1882, possess the last of these qualifications, but they might be elected as guardians if they possessed either of the other qualifications above mentioned."

It should be added here that in addition to the qualification mentioned in the text, there must now be added that under the Representation of the People Act,

Note to Section 20.

1918, 7 & 8 Geo. 5, c. 64, s. 10, which provides that a person shall in addition to and without prejudice to any other qualification, be qualified to be elected a member of the local government authority for any local government electoral area if he is the owner of property held by freehold, copyhold, leasehold, or any other tenure within the area of that authority.

(*e*) It is now provided by the Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo. 5, c. 71, that a person shall not be disqualified by sex or marriage from the exercise of any public function or from being appointed to or holding any civil or judicial office or post.

(*f*) The 4 & 5 Will. 4, c. 76, s. 38, provided that the Poor Law Commissioners (afterwards superseded by the Poor Law Board, and eventually by the Ministry of Health) should determine the number of the guardians to be elected in each union, and should also fix the qualification without which no person should be eligible as such guardian, such qualification to consist in being rated to the poor rate of some parish or parishes in the union, but so as not to require a qualification exceeding the annual rateable value of £40, and should also determine the number of guardians to be elected for any one or more of such parishes, having due regard to the circumstances of each such parish, provided always that one or more guardians should be elected for each parish. Amounts were accordingly fixed for the qualification of guardians in the several unions in England and Wales. Still later an Order of the L. G. B. (see 56 J. P. 778) reduced the qualification of guardians in all unions to a uniform rateable value of £5 ; but even that qualification is now abolished, and any person is qualified to be a guardian without regard to whether he is rated or possesses property in the union or elsewhere.

For disqualifications for the office of guardian, see s. 46, *post*, p. 952.

(3) The parochial electors of a parish (*a*) shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians (*b*), the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward :

(*a*) See note (*a*) to the preceding sub-section.

(*b*) Under s. 60 (*post*, p. 975) county councils have power to divide parishes into wards for the election of guardians and rural district councillors.

(4) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

This provision is applied to the election of rural district councillors by s. 24 (4), *post*, p. 931.

(5) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board :

This provision is also applied to the election of rural district councillors by s. 24 (4), *post*, p. 931. For the rules now in force, see App. II., *post*, Vol. II. Note that the Rules hitherto in force have been amended by the order referred to in the note to s. 23 (5), *post*, p. 929.

But for the Local Government Board must now be read the Secretary of State. See the Ministry of Health Registration and Elections Transfer of Powers Order, 1921.

(6) The term of office of a guardian shall be three years, and one third, as nearly as may be, of every board of guardians shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows :

Section 20.

(a) Where the county council on the application of the board of guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the board of guardians for the union, they may direct that the members of the board of guardians for that union shall retire together on the fifteenth day of April in every third year, and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties :

(b) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire unless, the county council, or a joint committee of the county councils, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct :

An order for simultaneous retirement can only be made on the application of the board of guardians or of the rural district council as the case may be. An application (under the District Councillors and Guardians (Term of Office) Act, 1900, *post*, p. 1009) for the revocation of such an order may come either from the guardians or from the district council of a district within the union.

(7) A board of guardians may elect a chairman or vice-chairman or both, and not more than two other persons, from outside their own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the board. Provided that on the first election, if a sufficient number of persons who have been ex officio or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons.

This does not apply to a rural district council save as regards the qualification of the chairman (see s. 24 (4), *post*, p 931). As to the vice-chairman of a rural district council, see s. 59 (2), *post*, p. 974.

The L. G. B. in reply to a question whether rural district councils can elect members from outside their own body in similar manner as guardians are empowered to do by s. 20 (7), stated that they had no authority to determine the question, but that it appeared to them, in view of ss. 59 (1) and 24 (4), that such a council can elect a chairman from outside their own body, but that they are not empowered to so elect either a vice-chairman or any other members.

Names of county districts and district councils.

21. *As from the appointed day,*—

(1) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts ; but nothing in this section shall alter the style or title of the corporation or council of a borough :

Section 75, *post*, p. 985, incorporates the L. G. A., 1888, s. 100, *ante*, p. 783, which defines an urban authority. By the P. H. A., 1875, s. 6, *ante*, p. 37, urban sanitary districts were of three kinds : 1st, Municipal boroughs ; 2nd, Improvement Act districts ; and 3rd, Local Government districts. In these the urban sanitary authorities were respectively the borough council, the improvement commissioners,

and the local board. The title of the borough and its council is not to be altered, but Improvement Act districts and local government districts are now called urban districts, and the urban sanitary authorities over these are now called urban district councils.

Note to Section 21.

(2) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district :

A rural sanitary district, prior to this Act, consisted of the area of a poor law union, exclusive of such parts thereof as were included in an urban district. Where a rural district formerly extended into two administrative counties, the part in each county is now in most cases a separate rural district : see s. 24 (5), *post*, p. 932.

(3) In this and every other Act of Parliament, unless the context otherwise requires, the expression " district council " shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression " county district " shall include every urban and rural district whether a borough or not.

Apparently (see s. 35, *post*, p. 947) this provision does not apply to a county borough. See further, the first note to the P. H. A., 1907, s. 13, *post*, p. 1025.

22. The chairman of a district council *unless a woman or* personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

Chairman of council to be justice.

The words in italics were repealed by the Sex Disqualification (Removal) Act, 1919, 9 & 10 Geo. 5, c. 71. A man may be personally disqualified to be a justice of the peace if he is sheriff (50 & 51 Vict. c. 55, s. 17). So, if he is a bankrupt, unless the adjudication against him is annulled, or he obtains his discharge with a certificate that his bankruptcy was caused by misfortune ; but this disqualification is not to exceed a period of five years from the date of the order of discharge (46 & 47 Vict. c. 52, s. 32 ; 53 & 54 Vict. c. 71, s. 9) ; it did not apply to a person adjudged bankrupt before the passing of the 46 & 47 Vict. c. 52 (*In re Pulborough School Board Election, Bourke* v. *Nutt*, [1894] 1 Q. B. 725 ; 58 J. P. 572). See also as to removal from the commission for corrupt practices, 46 & 47 Vict. c. 51, s. 38. Practising solicitors were formerly disqualified for being justices of any county in which they practised (34 Vict. c. 18). This disqualification was removed by the Justices of the Peace Act, 1906, which repealed the last-mentioned Act, and provided (s. 3) that " a solicitor, if otherwise qualified, may be appointed a justice of the peace for any county, but it shall not be lawful for any solicitor being a justice, or any partner of his, to practise directly or indirectly before the justices for that county or any borough within the county." The same Act abolished the qualification by estate previously required in the case of a justice of the peace for any county. If a clerk to justices be appointed chairman of a district council and qualifies as a justice, he will by so doing vacate his office as clerk to the justices (*R.* v. *Douglas*, [1898] 1 Q. B. 560 ; 62 J. P. 277) ; the same result would probably follow even if he did not qualify (see 70 J. P. N., p. 493).

The oaths to be taken by a justice are the oath of allegiance and the judicial oath (31 & 32 Vict. c. 72, s. 6). They are usually taken at quarter sessions (34 & 35 Vict. c. 48). In the case of *ex officio* justices the oaths may be, and frequently are, taken before two or more justices in petty sessions in pursuance of a direction issued from the Home Office on February 20th, 1895 (see 59 J. P. 185). As to the power to affirm instead of taking the oath, see 31 & 32 Vict. c. 72, s. 11 ; 51 & 52 Vict. c. 46, s. 1.

Note to Section 22.

By 59 & 60 Vict. c. 22, *post*, p. 1007, a chairman of a district council who has been re-elected to that office on the expiration or other determination of a previous term of office may continue to act as a justice of the peace without again taking the oaths mentioned in the text. This Act seems applicable, however, only where the two terms of office are consecutive without any interval during which some other person has been elected to and held the office.

As to fees payable by justices on qualification, see 71 J. P. N. 519; 77 J. P. N. 14. No sum can legally be recovered for such fees unless authorised by the table of fees payable to the clerk of the peace (*Maule* v. *White* (1896), 60 J. P. 567; 40 Sol. J. 744).

The Lord Chancellor had formerly no power to remove justices *virtute officii* under this section during their term of office, but now by the Justices of the Peace Act, 1906, s. 4, "any person who is a justice of the peace by virtue only of holding or having held any office may be excluded from the exercise of his functions as such justice by the same authority by which other justices can be removed from the commission of the peace."

The provision in the text is supplemental to that contained in the L. G. A., 1888, s. 2 (5), which provides that the chairman of a county council shall be, by virtue of his office, justice of the peace for the county. And in the case of the mayor of a borough it is provided by the Municipal Corporations Act, 1882, s. 155, that he shall, by virtue of his office, be a justice of the peace for the borough, and shall, unless disqualified to be mayor, continue to be such justice during the year next after he ceases to be mayor. But while the mayor of a borough is a justice only for the borough, the text provides that the chairman of a district council, urban or rural, shall be a justice of the peace for the county. The mayor of a borough, other than a county borough, is thus made a county justice while he is mayor. For the year succeeding his mayoralty he will be a justice for the borough, but not for the county, and the chairman of every other district council is, while chairman, a county justice.

Upon the question whether a chairman of an urban district council is entitled to act as a magistrate between April 15th and the election of his successor, the L. G. B. expressed the view that if his term of office does not expire on April 15th, and he continues in office as councillor without re-election, he can act as a magistrate up to the time of the appointment of his successor.

A chair*woman* of a board of guardians was not formerly a justice by virtue of her office. (But see now 9 & 10 Geo. 5, c. 71.) And a woman has been empowered by the Lord Chancellor under the Lunacy Act, 1891, s. 25, to sign "reception" orders for pauper lunatics as effectually as if she were a justice (77 J. P. N. 272).

Constitution of district councils in urban districts not being boroughs.

23. *As from the appointed day*, where an urban district is not a borough—

(1) There shall be no ex officio or nominated members of the urban sanitary authority:

For the meaning of "urban district," see s. 21 (1), and note thereto.

The cases in which there were in 1894 *ex officio* or nominated members of an urban authority were very few in number. There were some provisions relating to "selected" members of local boards in the P. H. A., 1875, Sched. II., r. 71, which related to boards formed before 1858, where the local board district included part of a borough, and a certain proportion of the members were appointed by the council of the borough. After the passing of the L. G. A., 1888, Orders were made under *ibid.*, s. 52, *ante*, p. 768, dealing with such cases, and there were probably very few, if any, urban authorities to which the provision in the text could apply.

(2) A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector (*a*) of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district (*b*), and no person shall be disqualified by sex or marriage for being elected or being a councillor. So much of any enactment whether in a public general or local and personal Act as relates to the

qualification of a member of an urban sanitary authority shall be repealed (*c*) : Section 23.

(*a*) As to " parochial electors," see note (*a*) to s. 20 (2), *ante*, p. 923.

(*b*) Residence is an alternative qualification. A person may be qualified by esidence though he is not a local government elector. As to what is meant by esidence, see the notes to s. 20 (2), *ante*, p. 924.

A person qualified by residence within the district does not lose his qualification y reason of his ceasing to reside within the district or of ceasing to be a local govern- ient elector during the period for which he was elected.

(*c*) See the note to the corresponding provision in s. 20 (2), *ante*, p. 925. Members f local boards were previously required to possess certain property qualifications rescribed by the P. H. A., 1875, Sched. II., Part I., r. 3. The qualification of nprovement commissioners was generally prescribed by the local improvement Act. 'his sub-section abolished such qualifications. On the other hand, the Representa- ion of the People Act, 1918, s. 10, creates a new qualification consisting in the wnership of property. The section is set out in the note to s. 20, *ante*, p. 925.

(3) The parochial electors (*a*) of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward (*b*) :

(*a*) See note to the preceding sub-section.

(*b*) As to lists and register of electors for wards, see the Representation of the People Act, 1918, Sch. I. s. 23; Sch. VI. s. 3, *post*, pp. 1105, 1108.

(4) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

Urban authorities (other than borough councils) had previously been elected in anner provided by the P. H. A., 1875, Sched. II., the voters being the persons egistered as owners of property within the district (or their proxies) and the rate- ayers, and the number of votes to be given by a voter varying with the value f the property of which he was owner, or for which he was rated; the maximum as six, but an occupying owner might vote both as owner and occupier. Now ach elector may give one vote and no more for each of the number of persons to be ected; thus, if there are six vacancies and seven candidates he can give one vote each of six of the candidates.

(5) The election shall, subject to the provisions of this Act, be conducted according to Rules framed under this Act by the Local Government Board :

For the Local Government Board must now be read the Secretary of State. See e Ministry of Health Registration and Election Transfer Order, 1921.

The provisions referred to are contained in this section and s. 48, *post*, p. 960. ie election will be by ballot, and the provisions of the Ballot Act, the Municipal rporations Act, and the Municipal Elections (Corrupt and Illegal Practices) Act, incorporated by the Rules, will apply. For the Rules at present in force, see pp II., *post*, Vol. II. It should be noticed that the Rules hitherto in force ve been amended by the Local Elections (Alteration of Rules) Order, 1919 (S. R. O., 1919, p. 1031).

Article 13 (2) of the Urban District Councillors Election Order, 1898, provides at if the urban district is divided into polling districts, each parochial elector all give his vote in the polling district in which the property in respect of which is entitled to vote is situate, and if it is situate in more than one polling district, may vote in any one (but in one only) of the polling districts in which it is situate. connection with the rearrangement of certain polling districts, it was found con- nient to appoint as a polling place a building just outside one of the proposed polling

Note to Section 23.

districts, and the L. G. B. were consulted in the matter. They stated that in considering any application for their assent to a departure from the article referred to they would pay attention to any objection made to the proposed arrangement by a parochial elector or other person interested; but that if there was no suitable place within the polling district available for taking the poll, the Board, in the absence of any local objection, would not raise a difficulty to the adoption of the course contemplated.

Three seats had to be filled on an urban district council. Only two valid nominations were made, that of one of two retiring councillors being invalid; the other retiring councillor did not seek re-election. Inquiry was made of the L. G. B. as to the course to be adopted. The Board referred to r. 10 (2) of the Election Order, 1898, and stated that it seemed to them that the returning officer should in his notice of the result of the election declare to be deemed re-elected such one of the two retiring councillors who had not been nominated at the present election as was highest on the poll at his election. If he declined to accept office under the Municipal Corporations Act, 1882, s. 34 (1), as applied in the Fifth Schedule to the Election Order, the Board considered that a casual vacancy would be created.

The L. G. B. expressed the opinion that the resignation of an urban district councillor is of no effect unless payment is made of the fine prescribed for non-acceptance of office. The council have no power to excuse payment of the fine or any part thereof. Regulations can at any time be made by an urban district council determining the amount of the fine "*for non-acceptance of office upon election*," and the amount so determined would apply as regards the payment to be made to effect a resignation subsequent to the making of the regulations.

(6) The term of office of a councillor shall be three years, and one-third, as nearly as may be, of the council, and if the district is divided into wards one-third, as nearly as may be, of the councillors for each ward, shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly-elected councillors. Provided that a county council may on request made by a resolution of an urban district council, passed by two-thirds of the members voting on the resolution, direct that the members of such council shall retire together on the fifteenth day of April in every third year, and such order shall have full effect (*a*).

(*a*) See the corresponding enactments relating to guardians in s. 20 (6), *ante* p. 925, and see also 63 & 64 Vict. c. 16, s. 1 (2), *post*, p. 1010. It is in the discretion of the county council to make the order, but they can only do so at the instance of the urban council. The resolution of that council may be passed by a two-thirds majority of those *voting*: a resolution of two-thirds of the entire body is not required, nor even of two-thirds of those present at the meeting.

Rural district councils.

24.—(1) The district council of every rural district shall consist of a chairman and councillors, and the councillors shall be elected by the parishes or other areas for the election of guardians in the district.

The areas for the election of guardians are parishes, wards of parishes, and united parishes. The parishes will include each part of a parish divided by virtue of this Act or by an order under s. 36, *post*, p. 947. Power is given to county council and joint committees to divide parishes into wards, and to unite them for the purposes of the election of guardians and rural district councillors (s. 60 (1), (3), *post*, pp. 975, 976).

As to the meaning of "rural district," see s. 21 (2), *ante*, p. 927.

(2) The number of councillors for each parish or other area in a rural district shall be the same as the number of guardians for that parish or area.

See the next sub-section, under which the district councillors for any rural area are constituted the guardians for that area. **Note to Section 24.**

(3) The district councillors for any parish or other area in a rural district shall be the representatives of that parish or area on the board of guardians, and when acting in that capacity shall be deemed to be guardians of the poor, and guardians as such shall not be elected for that parish or area.

Under this Act boards of guardians may, and generally do, include representatives of both urban and rural parishes. In an urban parish both guardians and district councillors must be elected; but in a rural parish district councillors only are elected, who represent the parish both on the rural district council and on the board of guardians. In other words a rural district councillor is also a guardian for his parish.

The guardians are, of course, a distinct body having duties and jurisdiction altogether different from the district council, and this is so even where the union and the rural district are co-extensive.

(4) The provisions of this Act with respect to the qualification, election, and term of office and retirement of guardians, and to the qualification of the chairman of the board of guardians, shall apply to district councillors and to the chairman of the district council of a rural district, and any person qualified to be a guardian for a union comprising the district shall be qualified to be a district councillor for the district.

For the provisions referred to, see s. 20, *ante*, p. 923. For the disqualifications of a district councillor or guardian, see s. 46, *post*, p. 952.

The chairman will be a justice of the peace by virtue of s. 22, *ante*, p. 927.

The concluding words of the sub-section must be noticed. A person may be qualified as a local government elector or resident, though his qualification is not within the district. It is sufficient if it is within a union comprising the district.

A person elected or deemed to be re-elected as a rural district councillor must make the declaration of acceptance of office within one month after notice of being elected or deemed to be re-elected. The L. G. B. have stated that if more than one calendar month has elapsed since a person elected as rural district councillor received the notice of his election, and he has not made the declaration of acceptance of office, he cannot then sign the declaration, as a casual vacancy would have arisen by the operation of s. 40 (3) of the Municipal Corporations Act, 1882, as adapted, which expressly enacts that non-acceptance of office by a person elected or deemed to be re-elected creates a casual vacancy.

Upon the question whether retiring rural district councillors can be deemed to be re-elected when they have ceased to possess any qualification the L. G. B. have stated that it seems to them that r. 10 (3) of the Election Order, 1898, contemplates that the returning officer will in such a case declare the retiring councillor to be deemed to be re-elected, apart from any question as to his qualification for election as a rural district councillor. The Board, however, pointed out that under the Municipal Corporations Act, 1882, s. 34 (1), as adapted, a declaration of acceptance of office is to be made only by a *qualified* person elected or deemed to be re-elected, and that if a member does not accept office a casual vacancy will arise under the operation of s. 40 (3) as adapted.

It is open to considerable doubt whether a rural district councillor holding office for a parish is not disqualified for nomination and election as a rural district councillor for another parish in the same rural district. The validity of the election in such a case might be questioned by means of an election petition under Part IV. of the Municipal Corporations Act, 1882, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and, as applied, altered and adapted by the Rural District Councillors Election Order, 1898.

Section 24.

(5) Where a rural sanitary district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall, save as otherwise provided by or in pursuance of this or any other Act, be as from the appointed day a rural district (*a*) ;

Provided that where the number of councillors of any such district will be less than five, the provisions, so far as unrepealed, of section nine of the Public Health Act, 1875, with respect to the nomination of persons to make up the members of a rural authority to five, shall apply (*b*), unless the Local Government Board by order direct that the affairs of the district shall be temporarily administered by the district council of an adjoining district in another county with which it was united before the appointed day, and, if they so direct, the councillors of the district shall be entitled, so far as regards those affairs, to sit and act as members of that district council, but a separate account shall be kept of receipts and expenses in respect of the district, and the same shall be credited or charged separately to the district.

(*a*) This provision took effect without any order under s. 36, *post*, p. 947, but it was one of the cases which the county council, or rather the joint committee, were to take into consideration under that section. It would appear that under that section the county council might for special reasons direct that the rural district should remain in two counties notwithstanding the above provision.

(*b*) The provisions of the P. H. A., 1875, s. 9, *ante*, p. 40 (so far as not repealed by this Act), are as follows: "Where the number of elective guardians is less than five, the L. G. B. may from time to time by order nominate such number of persons as may be necessary to make up that number, and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise." It was necessary for this power to be exercised unless a temporary order was made in manner provided by the text. In the case of such an order being made the text made provision for separate accounts being kept.

It should be noticed that s. 36 (1), *post*, p. 947, provides for the county council dealing with every rural district which will have less than five elected councillors. In such a case, unless the county council for special reasons otherwise directed, the district was to be united to some neighbouring district or districts. If no order for uniting the district with a neighbouring district was made, and the county council directed under s. 36 that such union should not be made, the provision in the text became applicable.

(6) The said provisions of section nine of the Public Health Act, 1875, shall apply to the district council of a rural district to which they apply at the passing of this Act.

See notes to the preceding sub-section. It should be observed that s. 9 of the Act of 1875 is of wider application than the provision in sub-s. (5), which is limited to cases in which rural districts are divided by reason of their being in two counties. Section 9 applies where one or more urban districts have been created within a union, leaving only a small rural district outside.

(7) Every district council for a rural district shall be a body corporate by the name of the district council, with the addition of the name of the district, or if there is any doubt as to the latter name, of such name as the county council direct, and shall have perpetual succession and a common seal, and may hold land for the purposes of their powers and duties without licence in mortmain.

Note to Section 24.

There had previously been no need for this provision, for the board of guardians was already a corporate body, and by the P. H. A., 1875, s. 9, the guardians were the rural sanitary authority.

Borough councils are incorporated by the Municipal Corporations Act, 1882, and other urban district councils by the P. H. A., 1875, s. 7, *ante*, p. 39.

It is for the county council to give or alter the name of a rural district in case of the division of an old district, etc.

As to holding land without licence in mortmain, see also the Mortmain and Charitable Uses Acts in App. I., *post*, Vol. II., and notes thereto.

Powers of district councils with respect to sanitary and highway matters.

25.—(1) *As from the appointed day*, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district (*a*), and of any highway authority in the district (*b*), *and highway boards shall cease to exist*, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority (*c*). *Provided that the council of any county may by order postpone within their county or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as the Local Government Board may on the application of such council allow* (*d*).

Sanitary powers.

(*a*) These are the powers conferred upon a rural sanitary authority as such by the Public Health Acts and other statutes, including powers under adoptive Acts in cases where those Acts had been adopted by the rural sanitary authority. Any urban powers which might have been conferred upon the pre-existing rural authority by Order of the L. G. B. under the P. H. A., 1875, s. 276, or the P. H. A., 1890, s. 5, were also transferred to the rural district council. The section would not seem to apply to the case of a rural district constituted after the appointed day by some order under the Act, but the Order would probably make all necessary provision.

Highway powers.

Where, under an inclosure award, the duty of cleansing a watercourse was imposed upon the surveyor of highways for the time being, it was held that the duty was transferred to the rural district council under this section (*Att.-Gen.* v. *Tamworth R. D. C.* (1901), 85 L. T. 190). For other cases arising under inclosure awards in which the position of district councils, as successors to the inhabitants of parishes or to highway surveyors, has been discussed, see *Att.-Gen.* v. *Lunesdale R. D. C.* (1902), 86 L. T. 822; *Neaverson* v. *Peterborough R. D. C.*, [1902] 1 Ch. 557; 66 J. P. 404; *Irving* v. *Carlisle R. D. C.* (1907), 71 J. P. 212; 5 L. G. R. 776; *Att.-Gen.* v. *Garner*, [1907] 2 K. B. 480; 71 J. P. 357. And see *Papworth* v. *Battersea Corporation*, [1916] 1 K. B. 583; 80 J. P. 177. In a recent case it was held by the Court of Appeal that as there was no right of action for damages against a highway authority until actual damage had accrued, the preceding highway authorities were not under any liability which could be passed on to their successors; and further, that on the true construction of the Acts creating the successive highway authorities, there was nothing to make any such authority liable for acts of misfeasance committed by its predecessors (*Nash* v. *Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57).

Where a surveyor of highways had contracted under the Highways and Bridges Act, 1891, to contribute by instalments to the cost of constructing a bridge, it was held that the liability to pay the remaining instalments passed to the rural district council under this section (*Hertfordshire C. C.* v. *Barnet R. D. C.*, [1902] 2 K. B. 48; 66 J. P. 531).

Note to Section 25.

In *Williamson* v. *Durham R. D. C.*, [1906] 2 K. B. 65; 70 J. P. 352, it was held that a pipe (originally put in for conveying away surface water from a road) which in 1894 was vested in or under the control of a highway board, and was consequently not then a sewer within the meaning of the P. H. A., 1875, s. 4, did not, upon the passing of the L. G. A., 1894, become a sewer by virtue of s. 25, *supra*. The decision in this case was followed in *Irving* v. *Carlisle R. D. C.*, *ante*, p. 933.

Former highway authorities.

(*b*) The highway authorities here referred to were the surveyors of highway parishes, highway boards in highway districts, and rural sanitary authorities who had highway powers under the Highway Act, 1878. They included, also, in a few cases, highway authorities under local Acts (see *Re Isle of Wight Highway Commissioners and Isle of Wight C. C.* (1895), 59 J. P. 438; 72 L. T. 569; *Re Marshland Smeeth and Fen District Commissioners and Marshland R. D. C.* (1895), 59 J. P. 824; 73 L. T. 563). The powers of these pre-existing highway authorities were not uniform; and therefore the powers of rural district councils in highway matters are not uniform.

See also following note and notes to the P. H. A., 1875, ss. 144—148.

(*c*) See these sections, *ante*, pp. 253—273. The effect of their application is shortly as follows: The rural district council have all the powers, duties, and liabilities of surveyors of highways, and also, if a highway board pre-existed in the district, the somewhat wider powers of such a board; further they have all the powers which are given by the Highway Acts to the inhabitants in vestry assembled of any parish within the district. The rural district council may agree with any person for the making of new public roads, and they have power to agree for the making of public bridges under or above railways or canals. They also have power to enter into agreements with any persons liable to repair any road with the view to the taking over by them of the maintenance, repair, cleansing, or watering of such road.

It is perhaps unfortunate that s. 149 of the Act of 1875 was not included among the powers given to rural councils. If such powers are required in any case application should be made to the Ministry of Health for an order under s. 276 of the Act.

The council collectively, and not any individual member, is the "surveyor of highways": therefore the application of these sections does not make a councillor liable to penalties under the Highway Act, 1835, s. 46, for hiring to the council a team to be used in repairing a highway within their district, without any previous licence obtained from justices of the peace (*Buckley* v. *Hanson* (1898), 62 J. P. 119; 77 L. T. 664). So, too, the council's surveyor is not "the surveyor of highways" (*R.* v. *Bradford*, [1908] 1 K. B. 365; 72 J. P. 61). *Cf. Hardcastle* v. *Bielby*, [1892] 1 Q. B. 709; 56 J. P. 549, where the point was apparently missed.

(*d*) All such postponement orders have expired.

(2) Where a highway repairable ratione tenuræ appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the district council to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.

Ratione tenuræ highways.

The liability to repair a highway *ratione tenuræ* exists where an individual or corporation is bound to repair a highway by reason of a condition attached to his or its tenure of certain lands. For modern cases in which the nature or existence of such a liability has been under discussion, see *R.* v. *Barker* (1890), 25 Q. B. D. 213; 54 J. P. 615; *Heath* v. *Weaverham Overseers*, [1894] 2 Q. B. 108; 58 J. P. 557; *Dalton Overseers* v. *N. E. Rail. Co.*, [1900] A. C. 345; 64 J. P. 612; *Esher U. D. C.* v. *Marks* (1902), 71 L. J. K. B. 309; 66 J. P. 243; *Ferrand* v. *Bingley U. D. C.* [1903] 2 K. B. 445; 67 J. P. 370; *Maude* v. *Thirsk Union* (1914), 78 J. P. N. 100; *In re Earl of Stamford and Warrington, Payne* v. *Grey* (No. 2), [1911] 1 Ch. 648; 75 J. P. 346. The text affords a simple remedy for enforcing the liability. There must be a report of a competent surveyor (not necessarily the surveyor to the council) and there must be a failure on the part of the person liable to put the highway into proper repair. The remedy given is confined to the occupier, and creates no liability in the owner of the land to repay the sums so expended (*Cuckfield R. D. C.* v. *Goring*

Note to Section 25.

[1898] 1 Q. B. 865; 62 J. P. 358; *Daventry R. D. C.* v. *Parker*, [1900] 1 Q. B. 1; 63 J. P. 708).

The expenses appear to be recoverable by action only. A county court judge held that the jurisdiction of the county court in such an action was ousted under the County Courts Act, 1888, ss. 56 and 60, on the ground that the estate sought to be charged *ratione tenuræ* was worth more than £50 per annum (*Barnstaple R. D. C.* v. *Rudd* (1897), 103 L. T. Newsp. 11); a new trial was afterwards granted, and resulted in a verdict for the plaintiffs. As to evidence of liability to repair *ratione tenuræ*, see *Rundle* v. *Hearle*, [1898] 2 Q. B. 83; *L. & N. W. Rail. Co.* v. *Commissioners of Sewers for Fobbing Level* (1896), 66 L. J. Q. B. 127; 75 L. T. 629; *Esher U. D. C.* v. *Marks*, and *Ferrand* v. *Bingley U. D. C.*, *ante*, p. 934.

(3) Where a highway authority receives any contribution from the county council towards the cost of any highway under section eleven, sub-section (10), of the Local Government Act, 1888, such contribution may be made, subject to any such conditions for the proper maintenance and repair of such highways, as may be agreed on between the county council and the highway authority.

By the L. G. A., 1888, s. 11 (10), *ante*, p. 745, a county council may, if they think fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any public highway or public footpath in the county, though the same is not a main road. The text amends this provision by enabling the council to impose terms and conditions upon making such contributions.

(4) Where the council of a rural district become the highway authority for that district, any excluded part of a parish under section two hundred and sixteen of the Public Health Act, 1875, which is situate in that district, shall cease to be part of any urban district for the purpose of highways, *but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.*

See the P. H. A., 1875, s. 216, *ante*, p. 496, and the notes thereunder.

(5) Rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities (*a*) under the Public Health Acts or any other Act, and such provisions (*b*) of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct.

(*a*) See the note to the next sub-section. The text enables the Ministry of Health by general order to confer on rural authorities powers which are otherwise exercisable only by urban authorities, and that not merely under the Public Health Acts, but under any other Act. Therefore the Board might by *general* order extend to rural authorities the provisions of Acts which at present are administered only by urban authorities; but no such orders appear to have been made.

(*b*) There is a distinction between "powers," etc. of urban authorities and "provisions" relating to urban districts. See, for example, the P. H. A., 1875, s. 171 (1), which is an urban provision capable of being applied to rural districts, but which to some extent confers powers upon the police only.

(6) The power to make such general orders shall be in addition to and not in substitution for the powers conferred on the Board by section two hundred and seventy-six of the Public Health Act, 1875, or by any enactment applying that section; and every order made by the Local Government Board under this section shall be forthwith laid before Parliament.

Note to Section 25.

Under the P. H. A., 1875, s. 276, *ante*, p. 613, the Ministry of Health may confer upon any particular rural authority urban powers, that is to say, powers which the P. H. A. itself confers only upon urban authorities. This power is frequently exercised upon application for the purpose of enabling rural authorities to make up private streets, to water, cleanse, name and light streets, to provide urinals, to make byelaws as to nuisances, slaughter-houses, new streets, buildings and offensive trades, to secure the numbering of houses, and, in short, to put in force any of the provisions applicable to urban districts which are required in particular rural parishes. The jurisdiction of the Ministry in these respects is not taken away, but the Ministry may, in addition, by *general* order (*i.e.*, an order applicable to all rural authorities) confer upon all rural district councils any urban powers. No general order under this section has, however, been issued at present.

The provisions as to laying the orders before Parliament will only apply to the general orders made under the preceding sub-section.

(7) The powers conferred on the Local Government Board by the said section two hundred and seventy-six, or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish.

The P. H. A., 1890, s. 5, p. 822, *ante*, and the Private Street Works Act, 1892, s. 4, p. 872, *ante*, may be referred to as examples of "enactments applying" (s. 276).

Under the P. H. A., 1875, s. 276, *ante*, p. 613, the application for urban powers must come from the rural authority or from persons rated to the poor rate to the extent of one-tenth of the district or of any contributory place therein for which the urban powers are applied for. Under the text it may come from the county council or a parish council, but in either case the powers will be conferred on the rural district council alone. In some instances an order has been issued upon the application of a parish council, but no case is known to the editors in which a county council have been the applicants. If the particular provision in question is a *power* and not a *duty* (*e.g.*, the power conferred by s. 39 of the Act of 1875), and the rural district council are not willing to exercise the power, the precise value of such an order is not apparent.

Duties and powers of district council as to rights of way, rights of common and roadside waste.

26.—(1) It shall be the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district.

This provision is merely declaratory so far as highways within a council's district are concerned, for the duty mentioned is one which would by law devolve upon the highway authority as such. It is the duty of a highway authority to prevent the stopping up or obstruction of any highway, and with regard to encroachment on roadside wastes, it is to be observed that the greensward by the side of the highway and within the fences is in general part of the highway, as much as the metalled portion, and any obstruction thereof is a public nuisance, which may be prevented by indictment or injunction. See *R.* v. *United Kingdom Telegraph Co.*, and cases cited therewith in note (*i*) to the L. G. A., 1888, s. 11 (1), *ante*, p. 739. As to obstruction of a highway by the erection and maintenance of gates, see *Att.-Gen.* v. *Meyrick* (1915), 79 J. P. 515.

An urban council has power to remove encroachments upon any highway vested in it by the P. H. A., 1875, s. 149, without first taking proceedings either summarily or by way of indictment against the person responsible for the encroachment (*Reynolds* v. *Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296). And according to the dicta in *Louth U. D. C.* v. *West* (1896), 65 L. J. Q. B. 535; 60 J. P. 600, it would appear that this power is exercisable by rural councils also on the ground that a statutory

Note to Section 26.

duty is cast upon *all* district councils to protect highways and roadside wastes. See also *Harris* v. *Northamptonshire C. C.*, *post*, p. 939, as to the position of a county council in this respect. In the *Louth Case*, *ante*, p. 936, it was held that the authority might recover the expenses of removal by action from the person responsible. And see as to costs in the County Court in an action to recover expenses, *Dartford R. D. C.* v. *Stone Court, &c. Co.* (1917), 39 M. C. C. 169.

An urban council discharging duties under this sub-section is in the same position as a private individual protecting his own property, and is not acting judicially. Consequently if a member uses his influence in his own private interest, the acts of the council are not thereby invalidated (*Murray* v. *Epsom L. B.*, [1897] 1 Ch 35 : 61 J. P. 71).

Reference may be made to the cases collected in note (*i*) on p. 284, *ante*, showing that a highway authority cannot legally sanction a permanent obstruction to a highway.

It should be observed that the duty of the district council extends to rights of way in an adjoining district, if their own district is prejudiced.

Sub-section (4) of this section requires the district council to take action upon the representation of a parish council.

(2) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district ; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section ; and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council.

The necessity for the consent of the county council should be observed.

The aid which the district council may give is not specified, but presumably it includes a grant of money in aid of legal proceedings instituted with reference to the rights in dispute ; and see the next sub-section. There is much misapprehension on the subject of rights of common. These consist strictly of the rights of tenants of the manor, whether freeholders or commoners, over the waste lands of the manor, which belong to the lord of the manor subject to such rights. They may consist of common of pasture, turbary, estovers, foldage, or the like. As to the right of action for interference with rights of common, see *King* v. *Brown, Durant & Co.*, [1913] 2 Ch. 416 ; *Hope* v. *Osborne*, [1913] 2 Ch. 349.

Members of the public, as such, have, in strictness, no rights of common, but there may be in the inhabitants of any particular village or district a right depending on ancient custom to use the wastes or part of them for purposes of recreation. See *Hall* v. *Nottingham* (1875), 1 Ex. D. 1, and cases therein cited. A custom for the inhabitants of several adjoining parishes to exercise the right of recreation over land situate in one of such parishes only is bad (*Edwards* v. *Jenkins*, [1896] 1 Ch. 308 ; 60 J. P. 167). As to the distinction between a right of recreation and a right of way, see *Abercromby* v. *Town Commissioners of Fermoy*, [1900] 1 I. R. 302 ; *Dyce* v. *Lady James Hay* (1852), 1 Macq. H. L. 305.

Section 8 of the Commons Act, 1876, which contains important provisions, will be found in App. I., *post*, Vol. II. See also the Commons Act, 1899, in the same Appendix, *post*, Vol. II. The Board of Agriculture has now been superseded by the Minister of Agriculture (9 & 10 Geo. 5, c. 91).

(3) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient.

This provision is to some extent explanatory of the preceding sub-sections, which enable the council to protect public rights of way and to aid in maintaining rights

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of common. But it does not exclude other methods of aiding in the maintenance of rights, *e.g.*, by a grant of money. It expressly enables the council to institute or defend legal proceedings, if they think fit, for the protection of a right of way, and they might, where they are in possession of a right of common, institute proceedings to prevent any illegal enclosure of or encroachment on the common. The power of the court to make a declaration under R. S. C., Order XXV., r. 5, is important in this connection: see *Locke-King* v. *Woking U. D. C.*, *ante*, p. 739. It has apparently been assumed that the powers given by this sub-section include power to compromise proceedings (see *Sprigg* v. *Warblington U. D. C.* (1899), Times, November 18th, and *Molyneux* v. *Horsham R. D. C.* (1900), Times, July 19th); but it may be doubted whether in the absence of the Attorney-General a council could effectually bind the public in purporting to abandon any right claimed (*cf. Newton Abbot R. D. C.* v. *Wills*, *infra*). See also note to sub-s. (4).

See, too, *Greenwell* v. *Howell* and *R.* v. *Norfolk C. C.*, cited in the note to the next sub-section, and also the cases as to costs, where a local authority is unsuccessfully sued, collected at p. 899, *ante*.

(4) Where a parish council have represented to the district council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and if that council so resolve the powers and duties of the district council under this section shall be transferred to the county council.

In a rural parish not having a separate parish council a representation may be made under this sub-section by the parish meeting (see s. 19 (8), *ante*, p. 923). When a representation is made to the district council under this sub-section they must consider it with a view to satisfying themselves whether it is well founded or not. If they think it is well founded they must take legal proceedings which may be (1) summary, under the Highway Act, 1835, s. 72, or the Highway Act, 1864, s. 51; or (2) by indictment; or (3) by action for a declaration and injunction; or they may abate any nuisance or obstruction and defend any resulting action. In the case of an action by the council it has apparently been held that it is not necessary to join the Attorney-General as a plaintiff (*Newton Abbot R. D. C.* v. *Wills* (1913), 77 J. P. 333); but see *Wallasey L. B.* v. *Gracey*, p. 207, *ante*. If the council think that the representation is not well founded, they may refuse to take proceedings, but upon such refusal an appeal lies to the county council, who may thereupon take the like proceedings upon resolution in manner provided by s. 63, *post*, p. 978.

If a council acting under this section assert the existence of a public right of way over a man's land and threaten and intend to exercise it by their servants and agents, an action for an injunction and declaration will lie against them. *Quære* whether a mere assertion of the existence of the right and the provision of assistance to individuals who are already litigating it on their own initiative would give a cause of action against the council (*Thornhill* v. *Weekes*, [1913] 1 Ch. 438; 77 J. P. 231; and at a later stage, [1913] 2 Ch. 464; 77 J. P. 327). An action was brought by certain land owners against private individuals for removing obstructions to an alleged public right of way. The district council having passed and acted on a resolution to defend the action under the above section, were themselves made defendants, and a declaration that there was no public right of way was asked against them. On an application by the district council to be struck out as defendants, the plaintiffs were allowed to amend by alleging that the district council threatened and intended to use the alleged public right of way by their servants or agents. The district council then put in a defence stating that they neither claimed nor denied

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that the public right of way claimed by their co-defendants in fact existed, and they denied any threat or intention to use it by their servants or agents, but, though really innocent of any such threat or intention, they in fact conducted the whole defence on the main issue, namely, the existence of the public right of way, up to the trial, and failed to establish it. It was held that the plaintiffs were entitled to a declaration with costs against all the defendants, including the district council (*Thornhill* v. *Weekes* (No. 3), [1915] 1 Ch. 106; 78 J. P. 154). See also as to costs, *Att.-Gen.* v. *Bowen* (1914), 78 J. P. N. 220; *London County Council* v. *Bermondsey Corporation*, [1915] 3 K. B. 305; 79 J. P. 449. Officials of a district council or a county council, acting in default of a district council, may, acting under direction of the council, assert the public right by removal of an obstruction, and in the event of an action against them failing, they will be entitled to costs as between solicitor and client, under the Public Authorities Protection Act, 1893 (*Greenwell* v. *Howell*, [1900] 1 Q. B. 535). See further as to costs where an unsuccessful action is brought against a public authority, *Leckhampton Quarries Co., Ltd.* v. *Ballinger* and other cases collected therewith at p. 900, *ante*. The district council, or, in their default, the county council, might also, if they thought fit, pay the costs of the defendants in an action brought by the owners of an estate against private persons for trespass in removing obstacles to an alleged public right of way (*R.* v. *Norfolk C. C.*, [1901] 2 K. B. 268; 65 J. P. 454). In Scotland it has been held that an authority who procure themselves to be added as defendants to an action cannot claim the benefits of the Public Authorities Protection Act, 1893, as to costs (*M'Robert* v. *Reid* (1914), 51 Sc. L. R. 500).

The herbage at the side of a highway is in many cases the property of the district council or other public authority: see *Coverdale* v. *Charlton* (1878), 4 Q. B. D. 104; 43 J. P. 268; *Haigh* v. *West*, [1893] 2 Q. B. 19; 57 J. P. 358; *Neaverson* v. *Peterborough R. D. C.*, [1902] 1 Ch. 557; 66 J. P. 404.

Several orders have been issued by county councils under this section transferring to themselves the powers and duties of rural district councils as to the taking of proceedings against persons for encroachments.

(5) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

This means that the expenditure of a council incurred in pursuance of this section is not to be regarded as illegally incurred by reason of its being eventually found that the right of way sought to be asserted does not in fact exist.

The expenses of a rural council will presumably be chargeable as general expenses of the whole rural district, unless made special by the Ministry of Health by order under the P. H. A., 1890, s. 49 (a course not commonly adopted).

In the event of a county council incurring expense in default of a rural district council, it is not clear that the debt can be thrown upon part of the district. See s. 63, *post*, p. 978.

(6) Nothing in this section shall affect the powers of the county council in relation to roadside wastes.

The powers of the county council as to roadside wastes depend upon the L. G. A., 1888, s. 11, *ante*, p. 736, which imposes upon the county council the duty of maintaining main roads. Under that section the county council have the same powers as a highway board for asserting the right of the public to the use and enjoyment of the roadside wastes, and they may abate an encroachment, although the soil is not vested in them (*Harris* v. *Northamptonshire C. C.* (1897), 61 J. P. 599; 13 T. L. R. 440).

(7) Nothing in this section shall prejudice any powers exercisable by an urban sanitary authority at the passing of this Act, and the council

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of every county borough shall have the additional powers conferred on a district council by this section.

This preserved to an urban sanitary authority any special highway powers which they might possess.

Transfer of certain powers of justices to district councils.

27.—(1) *As from the appointed day* the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say,—

(a) The licensing of gang masters ;

The Agricultural Gangs Act, 1867 (see App. I., *post*, Vol. II.), defines a "gang-master" as one "who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation."

(b) The grant of pawnbrokers' certificates ;

These certificates were previously granted in areas where there was no stipendiary magistrate by the justices in petty sessions under the Pawnbrokers Act, 1872 (see App. I., *post*, Vol. II.), upon notice given in accordance with s. 42 of that Act ; they cannot be refused except on the ground that the applicant has failed to give satisfactory evidence of good character, or that his shop or any adjacent property of his is frequented by thieves or persons of bad character, or that he has failed to comply with the requirements of the Act as to notice (s. 43).

Quarter sessions on an appeal against a district council's refusal to grant a pawnbroker's certificate have no jurisdiction to order the appellants' costs to be paid by the council where the council have taken no steps in relation to the appeal and have not appeared at the hearing (*R.* v. *Northumberland JJ.* (1907), 71 J. P. 331 ; 96 L. T. 700).

(c) The licensing of dealers in game ;

Until 1894 these licences were granted by justices in special sessions under the Game Act, 1831, s. 18 (see App. I., *post*, Vol. II.). There is no appeal against the refusal of such a licence.

(d) The grant of licenses for passage brokers and emigrant runners ;

The Act relating to passage brokers and emigrant runners is the Merchant Shipping Act, 1894, for the material provisions of which see App. I., *post*, Vol. II.

(e) The abolition of fairs and alteration of days for holding fairs ;

By the Fairs Acts, 1871 (see App. I., *post*, Vol. II.), upon representation duly made to him by the magistrates of any petty sessional districts within which any fair is held, or by the owner of any fair, that it would be for the convenience and advantage of the public that any such fair shall be abolished, the Home Secretary may, with the consent of the owner of the fair, order its abolition. By the Fairs Act, 1873 (see App. I., *post*, Vol. II.), the Home Secretary, upon the like representation, may order that any fair shall be held upon other days than those on which it used to be held. The representations which were originally made by justices under these Acts will for the future be made by district councils. Under both Acts advertisements of the representation and of the Order (if any) must be published.

(f) The execution as the local authority of the Acts relating to petroleum *and infant life protection ;*

when arising within a county district, shall be transferred to the district council of the district.

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For the Petroleum Acts (34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; and 44 & 45 Vict. c. 67) see App. I., *post*, Vol. II. Formerly the local authority for the execution of these Acts was in an urban district the corporation, local board, or improvement commissioners, as the case might be, and in a rural district the justices in petty sessions. The local authority in every district is now the district council.

The Infant Life Protection Act, 1872 (the statute referred to in this clause), was repealed by the Infant Life Protection Act, 1897, which in turn was repealed by the Children Act, 1908, under which the guardians, and not the district council, are the local authority for the purposes of infant life protection in places outside the county or city of London.

(2) *As from the appointed day*, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district.

The term "county district" includes every urban and rural district whether a borough or not (s. 21 (3), *ante*, p. 927).

From the refusal of such a licence by a district council appeal lies to quarter sessions under s. 7 of the P. H. A., 1890, *ante*, p. 823, notwithstanding the provision in the text (*R.* v. *Essex JJ., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345).

The licences above referred to are those granted under the Knackers Acts, 1786 and 1844 (see App. I., *post*, Vol. II.). Such a licence is quite distinct from the slaughter-house licence granted by urban authorities under the P. H. A., 1875, s. 169, *ante*, p. 389.

(3) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

Expenses of urban district council.

28. The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council by this Act shall, subject to the provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875.

See the P. H. A., 1875, ss. 207—210, pp. 469—478, *ante*.

Expenses of rural district council.

29. The expenses incurred by the council of a rural district shall, subject to the provisions of this Act, be defrayed in manner directed by the Public Health Act, 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions of the Public Health Acts with respect to those expenses shall apply accordingly (*a*).

Provided as follows:

(a) Any highway expenses shall be defrayed as general expenses (*b*):

(*a*) Provisions for the defraying of these expenses are contained in the P. H A., 1875, ss. 229—232, *ante*, pp. 510—520. The Ministry of Health consider that any loans required by rural councils for highway purposes should be raised with their sanction under the P. H. A., 1875.

(*b*) Before this Act, in a highway parish, the highway rate was made by the surveyor of highways upon all property rated to the relief of the poor, and was an equal rate, *i.e.*, was levied equally upon all kinds of property. In highway districts, the expenses of highways had been, since 1878, borne by a common fund raised out of the several parishes according to the rateable value of each (41 & 42 Vict. c. 77, s. 7), the rates in each parish being equal rates. The first provision in the above section,

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therefore, makes no change in the incidence of rates for highway purposes, which in a rural district are still borne equally by all kinds of rateable property. But legal exemptions from highway rate existing previously to the passing of this Act are not interfered with (*Lonsdale* v. *Lowther Overseers* (1896), 60 J. P. 297; *Dalton Overseers* v. *N. E. Rail. Co.*, *Ferrand* v. *Bingley U. D. C.*, and *Maude* v. *Thirsk Union*, *ante*, p. 934).

The P. H. A., 1890, s. 49, p. 859, *ante*, when in force in a district, enables the Ministry of Health to declare *any* expenses to be special expenses. It is against the practice of the department, however, to declare expenses of highway improvement to be special unless the circumstances are exceptional. Expenses of repair are never so declared. See, however, sub-s. (c), *infra*.

A rural council who succeeded a highway board have power, with the approval and assent therein mentioned, under the Highways and Bridges Act, 1891, s. 3, to charge the cost of improvements under that Act to particular parishes.

(b) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section two hundred and thirty of the Public Health Act, 1875:

Under the P. H. A., 1875, s. 229, *ante*, p. 510, and the P. H. A., 1890, s. 49, p. 859, *ante*, the Ministry of Health may order any expenses which would otherwise be payable as general expenses, to be defrayed as special expenses chargeable upon a particular contributory place. Previously, when such an order was made, the expenses (unless quite small in amount) had to be defrayed out of a special rate levied in manner provided by s. 230. Such a rate is not an equal one, for the properties enumerated in s. 230 are rated only at one-fourth of their rateable value. Now, when an order is made relating to expenses which would, if not separately chargeable on a contributory place, be raised as general expenses, the Ministry may direct that the special expenses shall be raised as general expenses, that is to say, out of the poor rate of the parish—an equal rate to which all properties are rateable at their full value. It is, of course, only in respect of a certain class of cases that this provision is of value.

(c) A district council shall have the same power of charging highway expenses under exceptional circumstances on a contributory place as a highway board has in respect of any area under section seven of the Highways and Locomotives (Amendment) Act, 1878:

The Highways and Locomotives (Amendment) Act, 1878, s. 7, after enacting that the expenses of a highway board should be deemed to have been incurred for the common benefit of the several parishes within the district and should be charged on the district fund provided that "if a highway board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes." The applicability of this proviso to a rural sanitary authority exercising the powers

of a highway board, though assumed by the court in *Sheppey Union* v. *Elmley Overseers* (1886), 17 Q. B. D. 364; 50 J. P. 343, was doubtful having regard to s. 5 (3) of the same Act, but is now put beyond dispute by the text.

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This power of dividing their district into parts for the purpose of charging the expenses of the highways in each part upon such part separately will be exercisable by a district council with the approval of the county council.

(d) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates, the district council shall make such provision as will give to that parish or area the benefit of such property or funds by way of reduction of the rates on the parish or area.

This applies where any parish has property producing an income applicable in relief of highway rates. Such a parish will still be entitled to the benefit of that property. Charitable trusts for the repair of roads are not put an end to by the provisions of this Act (*Att.-Gen.* v. *Day*, [1900] 1 Ch. 31; 64 J. P. 88; followed in *In re Hall's Charity* (1912), 76 J. P. 9; 28 T. L. R. 32 (a bridge case)).

30. The provisions of this Part of this Act respecting guardians shall apply to the administrative county of London and to every county borough. Guardians in London and county boroughs.

The provisions referred to are contained in s. 20, *ante*, p. 923.

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32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out of sessions, or of quarter sessions, which are transferred to a district council, shall apply to a county borough as if it were an urban district, and the county borough council were a district council. Application to county boroughs of provisions as to transfer of justices' powers.

The provisions referred to are contained in s. 27, *ante*, p. 940. These powers, duties, and liabilities are transferred to the council of a county borough, as in the case of any other urban district council, this express provision being rendered necessary by s. 35, *post*, p. 947.

33.—(1) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any power, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto. Power to apply certain provisions of Act to urban districts and London.

There is some doubt whether an order made under this section can be amended by a subsequent order. But the order made is not made by the Board or Ministry of Health in their capacity as successors of the Poor Law Commissioners, and it may therefore be questioned otherwise than by *certiorari* under s. 35 of the Poor Law Amendment Act, 1834, see *Jones* v. *Lewis*, *post*, p. 945.

In response to an application by an urban council in general terms for the powers obtainable by order under this section the L. G. B. wrote:—

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"As regards the application for any powers, duties, or liabilities of overseers, the Board do not consider that they can properly confer by an Order any powers of overseers other than those which are by the Act transferred to parish councils. If the district council desire any of the powers so transferred, the Board would wish to be furnished with a statement specifying which of the particular powers of overseers among those mentioned in s. 6 (1) (c) of the Act the council would desire. If application is made for any of the powers mentioned in paragraph (ii) of this provision, the precise reasons for the proposed transfer should be stated.

"With regard to the application of the council for any powers, duties, or liabilities of a parish council, the Board request to be informed what powers of a parish council the council desire to have conferred upon them. The Board think that the council should consider with respect to each provision of the Act which confers any power on parish councils, other than those above mentioned, whether the power is required by them, and, if so, why. They will find that some of these powers they already practically possess, and probably that others are not really required by them. When the council have adopted this course, the Board should be furnished with a statement setting out the powers desired and the sections and sub-sections of the Act by which they are conferred on parish councils, and giving briefly the reasons why the several powers are applied for.

"The Board may state for the information of the district council that the powers beyond those of appointing overseers and assistant overseers and of revoking the appointment of assistant overseers which have been applied for and obtained by other councils include those mentioned in ss. 5 (2) (c), 6 (1) (a), (b) as to closed churchyards, and (c) (i) and (iii), s. 8 (1) (g), (h), (i), and (k), s. 13 (2), s. 14, and s. 17 (8) of the Act. In several cases the powers of the vestry under ss. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869, have been applied for and transferred apart from the other powers of the vestry which pass under s. 6 (1) (a) of the Act of 1894.

"If any application should be made for the powers contained in s. 5 (2) (c), or s. 6 (i) (c) (iii) of the Act, the Ministry of Health would desire to be definitely informed (a) what property there is to which these provisions would apply, and (b) when and how such property was acquired. It should also be stated, if practicable, whether the property has formed the subject of correspondence between the overseers and the Board, or their predecessors the Poor Law Board and the Poor Law Commissioners."

The Ministry of Health usually provide in their Order that the expenses of an urban council in executing their new powers shall be chargeable like expenses under the P. H. A., 1875.

In urban districts, unless an order is made under this sub-section, overseers continue to be appointed by justices under 43 Eliz. c. 2, s. 1, and assistant overseers by justices on the nomination of the vestry under 59 Geo. 3, c. 12, s. 7.

The powers conferred by an order under this section may be given to the urban council or to any other representative body within the district. There is no definition of a representative body, but it may include the guardians if the union is included within the borough. See orders made under this section in 59 J. P. 745, 777, 778.

If no order is made under this section the revocation of the appointment of an assistant overseer remains in the discretion of the vestry, under 59 Geo. 3, c. 12, s. 7.

The transfer of the powers of overseers is important. These powers may include the preparation of the valuation lists, though the approval of such lists will still be the duty of the union assessment committee; also the making of the poor rate, though that will still have to be allowed by justices and published.

An order under this section giving to a district council the power of appointing overseers does not take away an individual's right to appeal against his appointment (*Bowden* v. *New Mills U. D. C.* (1908), 72 J. P. 472 (Q. S.)). On a special case in the same matter it was held that a practising solicitor is exempt from serving in the office of overseer and may appeal to sessions against his appointment; but that if the appointing council do not appear at sessions to oppose the appeal, sessions cannot order them to pay the costs of the appeal (*R.* v. *Derbyshire JJ.*, [1909] 1 K. B. 449; 73 J. P. 147).

As to serving upon the council notice of appeal against a poor rate, if an order has been made under this section transferring to the council the powers, duties,

and liabilities of overseers with respect (*inter alia*) to such appeals, see *R.* v. *De Grey*, [1900] 1 Q. B. 521; 64 J. P. 375; *R.* v. *Tewkesbury JJ.*, [1903] 1 K. B. 39; 67 J. P. 54. **Note to Section 33.**

See also the notes to the various sections defining the powers of parish councils.

(2) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish.

The exercise of this power is left to the discretion of the Ministry of Health, who will probably act only upon a representation made to them by the inhabitants or representatives of the parish interested either before an order is originally made under the preceding sub-section or afterwards. And see sub-s. (5), *infra*.

The sub-section appears to be a modification of s. 14 (2) and (3), *ante*, pp. 918, 919, under which a parish council have power to appoint trustees of parish charities. If no order is made under the above provision these powers of the parish council may be transferred to the borough or urban council under the preceding sub-section. It should be observed that an order can only be made when the borough or district is divided into wards.

(3) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

This provision enables the powers conferred by the previous sub-section to be limited to particular areas within the borough or district, but it gives no indication of the cases in which a restriction should be imposed. It is difficult to suggest such cases.

(4) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

The provision as to the incidence of the rate seems to have been inserted *ex cautela*, for it is not apparent how an order under this section could alter the incidence of any rate.

The provision as to officers was probably intended for the protection of such officers as an assistant overseer, collector, or vestry clerk. For this purpose the order may apply some of the provisions of s. 81 (7), *post*, p. 989, as to existing officers.

In a case where an order made under this section contained a clause to the effect that nothing in the order should apply to the revoking of the appointment of a person then holding the office of assistant overseer, it was held by the Court of Appeal that "the existing interests" mentioned in the text included, in the case of an assistant overseer, the possibility of being re-elected and re-appointed at an increased salary by the vestry who originally appointed him; that the order was *intra vires*; and that it did not transfer to the district council the right to re-appoint at an increased salary one who was assistant overseer at the date of the Act (*Jones* v. *Lewis*, [1919] 1 K. B. 328; 83 J. P. 61).

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(5) An order under this section may also be made on the application of any representative body within a borough or district.

The use of the word "also" refers apparently to sub-s. (1), under which the order may be made on the application of the borough or district council. As to the expression "representative body," see note to that sub-section. An order under sub-s. (2) may also be made on the application of a representative body.

. . . . . .

(7) The Local Government Board shall consult the Charity Commissioners before making any Order under this section with respect to any charity.

It will be noticed that this provision does not make the approval of the Charity Commissioners necessary to the validity of an order made by the Ministry of Health with respect to a charity; their approval is necessary in the case of a similar order as to a charity made by a county council, under s. 36 (3), *post*, p. 948.

Supplemental provisions as to control of overseers in urban districts.

34. Where an Order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers or the powers, duties, and liabilities of overseers, that Order or any subsequent Order of the Board may confer on such council or body the powers of the vestry under the third and fourth sections of the Poor Rate Assessment and Collection Act, 1869.

Section 3 of the Poor Rate Assessment and Collection Act, 1869, provides that in case the rateable value of any hereditament does not exceed £20 if the hereditament is situate in the metropolis, of £13 if situate in any parish wholly or partly within the borough of Liverpool, or £10 if situate wholly or partly within the city of Manchester or the borough of Birmingham, or £8 if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow him a commission not exceeding 25 per cent. on the amount thereof.

Section 4 provides that the vestry of any parish may from time to time order that the owners of all rateable hereditaments to which s. 3 of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order; and thereupon and as long as such order shall be in force the following enactments shall have effect: 1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of 15 per cent. from the amount of the rate. 2. If the owner of one or more of such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not less than one year, in respect of all such rateable hereditaments of which he is owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow him a further abatement or deduction not exceeding 15 per cent. from the amount of the rate during the time he is so rated. 3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day not being less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect: Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included.

It should here be mentioned that by the Increase of Rent, etc., Restrictions Act, 1920 (10 & 11 Geo. 5, c. 17), s. 16 (1), these sections, except so far as relates to the Metropolis, are to have effect as though for the limits of value therein specified, there were substituted limits 25 per cent. in excess of the limits so specified. The Act, however, is temporary only and expires on the 4th June, 1923. As to the rating of premises to which the Act applies, see *Roberts* v. *Poplar Assessment Committee* (1922), 38 T. L. R. 499.

Note to Section 34.

The effect of the provisions in the text is that when an order has been made under s. 33 giving to the council of the borough or district, or to some representative body, *either* the power of appointment of overseers and assistant overseers, *or* the powers, etc. of overseers, the powers of the vestry under the foregoing sections may be transferred to such council or representative body. If such a transfer is made,—then, where the power of *appointing* overseers and assistant overseers has been conferred, the overseers will act under s. 3, subject to the control of the council or body; and the overseers must give effect to any resolution of the council under s. 4; where the *powers* of overseers have been conferred, the council, in the exercise of the powers under s. 3, will be freed from the control of the vestry, and any resolution made by them under s. 4 will be carried out by themselves or rescinded by them in manner provided by that section.

An agreement made by an owner under these sections, though purporting to be made for a term of years, is in force only so long as the hereditaments rated are under the values specified in s. 3 (*Norwood (Overseers of)* v. *Salter*, [1892] 2 Q. B. 118; 56 J. P. 535).

The Act of 1869 provided by ss. 7, 19 that where an owner paid the rates or was rated under the above sections, the occupier was deemed to be rated and to have paid the rates for the purpose of any qualification or franchise depending on rating. But these sections are now repealed by the Representation of the People Act, 1918, 8 Geo. 5, c. 64, under which rating and the payment of rates form no part of the qualification of an elector.

Restrictions on application of Act to London, etc.

35. Save as specially provided by this Act, this Part of this Act shall not apply to the administrative county of London or to a county borough.

The special provisions in this Part of the Act applicable to the county of London and to a county borough are contained in ss. 30—33 inclusive.

PART III.

AREAS AND BOUNDARIES.

Duties and powers of county council with respect to areas and boundaries

36.—(1) For the purpose of carrying this Act into effect in the case of—

(a) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county; and

(b) every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and

(c) every rural parish which has a population of less than two hundred; and

(d) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district (*a*); and

(e) every rural parish which is co-extensive with a rural sanitary district;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely:

Section 36.

(i) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county (*b*);

(ii) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district (*c*); and

(iii) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts (*a*).

Some hundreds of orders were made during 1894 for the purpose of carrying out the sweeping alterations provided for by this section.

(*a*) See s. 24 (5), *ante*, p. 932.

(*b*) In the absence of an order to the contrary a poor law union extending into two counties became divided into two rural districts, one in each county (unless the rural part of the union was wholly in one county). See s. 24 (5), *ante*, p. 932.

(*c*) For the definition of a county district, see s. 21 (3), *ante*, p. 927.

(2) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, *as from the appointed day*, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

See hereon, *R.* v. *Middlesex JJ.*, cited at length in the notes under s. 42, *post*, p. 951.

(3) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

The county council might make an order uniting such a district with another district or districts, and if the district had less than five elected councillors, it was their duty to make such an order unless for special reasons they deemed it inadvisable. See s. 24 (5), *ante*, p. 932. It was also competent for the county council to direct that such a parish should have a parish council as well as a district council, and this was done in the case of Crowland.

There will, of course, be a parish meeting in such a parish having the powers and duties of the parish meeting of a parish which has a parish council. Where the district council and the parish council are one body, some of the powers of each

must of necessity disappear, *e.g.*, the power of a parish council to complain of the default of a district council under s. 16, and the consent of the two distinct bodies to the proceedings as to highways which are dealt with by s. 13.

Note to Section 36.

(5) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

Under the L. G. A., 1888, s. 54, p. 768, *ante*, the Ministry of Health may, after local inquiry, make an order for the alteration of the boundary of a county or borough and for other consequential matters. Such an order is provisional only and has no effect unless confirmed by Parliament.

(6) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alteration of unions.

On an order under this sub-section claims for adjustment might be made under s. 68, *post*, p. 980 (*In re Rochdale and Haslingden Unions*, [1899] 1 Q. B. 540).

(7) Where an order for the alteration of the boundary of any parish of the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be, shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty to petition the Local Government Board against the confirmation of the order.

(8) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under section fifty-seven of the Local Government Act, 1888.

See the section above referred to, *ante*, p. 770.

(9) Where a parish is by this Act divided into two or more parishes those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10) Subject to the provisions of this Act, any order made by a county council in pursuance of this Part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of petitioning against that order as is given by that section to any other authority.

See s. 57 of the Act of 1888, *ante*, p. 770. Sub-section (3) thereof relates to petitions against the confirmation of orders of county councils.

Note to Section 36.

Guardians can hardly be affected unless the union is altered under sub-s. (6). If so, it would seem that an order under that sub-section requires confirmation by the Ministry of Health. See the L. G. A., 1888, s. 57 (3), *ante*, p. 772. Section 40 of this Act expressly provides that certain orders therein named shall not require confirmation.

(11) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect to that area ; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint committee shall, if the county councils concerned fail to agree, be determined by the Local Government Board.

(12) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under this Act.

These commissioners were appointed under 50 & 51 Vict. c. 61, to inquire—

(a) as to the best mode of so adjusting the boundaries of the county and of other areas of local government as to arrange that no union, borough, sanitary district, or parish shall be situate in more than one county, and

(b) as to the best mode of dealing with parts of the county which are wholly or nearly detached from the county, and

(c) as to the best mode of dealing with the cases where a borough is not an urban sanitary district and is wholly or partly comprised in an urban sanitary district, and

(d) as to any alteration of boundaries, confirmation of areas, or administrative arrangements incidental to or consequential on any alteration which they may recommend in the boundaries of any county, union, borough, sanitary district, or parish.

(13) Every county council shall, *within two years after the passing of this Act, or* within such *further* period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said *two years or further* period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers.

Orders under this section were to be made by county councils "as soon as practicable." See sub-s. (1), *ante*, p. 947, and s. 83, *post*, p. 994.

* * * * * *

41. The time for petitioning against an order under section fifty-seven of the Local Government Act, 1888, shall be six weeks instead of three months after the notice referred to in sub-section three of that section. **Section 41.** Reduction of time for appealing against county council orders.

See the L. G. A., 1888, s. 57 (3), *ante*, p. 772. The provision in the text simply shortened the time within which a petition must be sent to the Ministry of Health to disallow an order under that section.

42. When an order under section fifty-seven of the Local Government Act, 1888, has been confirmed by the Local Government Board, such order shall at the expiration of six months from that confirmation be presumed to have been duly made, and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever. Validity of county council orders.

An order under s. 57 of the Act of 1888 is, generally speaking, administrative and not judicial; therefore, as a rule, prohibition does not lie against its making (see *R.* v. *London C. C.*, [1893] 2 Q. B. 454; 58 J. P. 21). On the same principle, it would seem that, as a rule, *certiorari* would not lie (see *R.* v. *Watermen's Co.*, [1897] 1 Q. B. 659). But see generally on this matter a later licensing case, in which most of the previous authorities as to when *certiorari* will lie were discussed (*R.* v. *Woodhouse*, [1906] 2 K. B. 501; 70 J. P. 485). The decision of the C. A. in this case was reversed, but on another point (*Leeds Corporation* v. *Ryder*, [1907] A. C. 420; 71 J. P. 484). The *certiorari* is clearly taken away by s. 220 of the Municipal Corporations Act, 1882, as incorporated by s. 75 of the Act of 1888, except in cases where the order is made entirely without jurisdiction. And see also s. 262 of the P. H. A., 1875, *ante*, p. 582, and the cases cited in the notes thereto. A provision of an order in regard to compensation might be considered to be judicial, so as to be removable by *certiorari*, if made entirely without jurisdiction. See *R.* v. *St. Olave's, Southwark* (1857), 8 El. & Bl. 529; 27 L. J. Q. B. 5. The inference to be drawn from the text appears to be that an order under s. 57 may be questioned by some means within six months from its making.

At the passing of the L. G. A., 1894, a parish was situate in two urban districts. It was divided, and an Order relating to such division was made by a joint committee of county councils under the L. G. Acts, 1888 and 1894, and confirmed by the L. G. B. The Order contained, *inter alia*, the following articles: "(9) Every person who has acquired, or who, on or before the date of the operation of the Order shall acquire a settlement in any of the existing parishes mentioned in the Articles 1 and 2 of the Order, shall be deemed to have acquired a settlement in the parish comprising the place in which the acts or circumstances conferring such settlement shall have been done or occurred. If such acts or circumstances shall have been done, or occurred in more than one place, such settlement shall be according as the last place of residence of such person shall have been at the time of acquiring such settlement. (10) Any person who shall have acquired a status of irremovability from any of the existing parishes mentioned in Articles 1 and 2 of the Order shall be deemed to have acquired a status of irremovability from the parish in which he shall reside on the date of the operation of the Order, or (if he shall then be in receipt of relief) from the parish comprising the place in which he was residing at the time of becoming chargeable." It was held that the Order, whether or not there was power to include in it the articles in question, must, by reason of s. 42 of the Act of 1894, at the expiration of six months after confirmation, be presumed to have been duly made and to be within the powers of s. 57 of the Act of 1888, and that no objection to its validity could be entertained (*R.* v. *Middlesex JJ.*; *Ex parte Walsall Union*, [1907] 2 K. B. 581; 71 J. P. 393).

Section 46.

PART IV.

SUPPLEMENTAL (*a*).

(*a*) Sections 43 and 44 of this Act, which related to the registration of electors and to elections, were repealed by the Representation of the People Act, 1918, 8 Geo. 5, c. 64, *post*.

Disqualification for parish or district council.

46.—(1) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough (*a*) or of a board of guardians if he—

(a) Is an infant or an alien (*b*) ; or

(b) Has within twelve months before his election (*c*), or since his election (*c*), received union or parochial relief (*d*) ; or

(c) Has, within five years before his election (*c*) or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon (*e*), or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors (*f*) ; or

(d) Holds any paid office under the parish council or district council or board of guardians, as the case may be (*g*) ; or

(e) Is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board (*h*).

Disqualification.

(*a*) The disqualifications here mentioned apply to members and chairmen of rural district councils, and of urban district councils other than borough councils. The disqualifications of borough councillors are still those set out in the Municipal Corporations Act, 1882, ss. 12, 39 ; it is outside the scope of this Work to refer to them more fully. Application was recently made for a writ of *quo warranto* in a case where an alderman of a borough had become insane. A rule nisi was granted, but the case was never argued as the alderman in question died before the return to the writ (*R.* v. *Gilbert* (1921), 43 M. C. C. 214).

A person disqualified at the time of nomination is disqualified for being elected (*Harford* v. *Lynskey*, [1899] 1 Q. B. 852 ; 63 J. P. 263). And see *Ford* v. *Newth*, *post*, p. 956.

It has been held under the Municipal Corporations Act, 1882, that although by s. 87 thereof a municipal election may be questioned on the ground that the person elected was at the time of election disqualified by election petition only, yet, bankruptcy being by s. 32 of the Bankruptcy Act, 1883, a disqualification not merely for election, but also for " holding " office, an information *quo warranto* would lie (*R.* v. *Beer* ; *R.* v. *Ealing Corporation*, [1903] 2 K. B. 693 ; 67 J. P. 326) ; and *cf. Forrester* v. *Norton*, [1911] 2 K. B. 953 ; 75 J. P. 510.

Disqualifications other than those specified in this section arise under the Felony Act, 1870, s. 2 ; the Corrupt Practices Acts, 1883, ss. 4, 6, 10 ; 1884, ss. 2, 3, and 1889 ; the Bankruptcy Act, 1883, s. 32, as amended by the Bankruptcy Act, 1890, s. 9. The provisions of the last-mentioned sections relating to bankruptcy extend to members of sanitary authorities (district councils) and boards of guardians ; but, as regards these bodies, they may be taken to be superseded by clause (c) of the present sub-section.

(*b*) Aliens are persons who do not owe allegiance to the Sovereign of the United Kingdom Persons who are aliens by birth cease to be such upon becoming naturalised British subjects. See the British Nationality and Status of Aliens Act, 1914. A person may be an alien if he has lost his foreign nationality but has not

acquired British nationality (*Stock* v. *The Public Trustee*, [1921] 2 Ch. 67; and see *Chamberlain* v. *Chamberlain*, *ibid.*, 533). **Note to Section 46.**

(*c*) By s. 75 (2), the expression "election" includes both nomination and poll, and therefore the disqualification arising from the receipt of relief or conviction of crime will result from such receipt or conviction within the specified periods before the nomination; and *cf. Harford* v. *Lynskey*, *ante*, p. 952. "Election."

(*d*) The words "or other alms" which occur in the similar clause relating to disqualification of burgesses (Municipal Corporations Act, 1882, s. 9), and have given rise to some difficulty, are here omitted. Relief to a man's father is not, and to his wife or children under the age of sixteen is, relief to himself (*R.* v. *Ireland* (1868), L. R. 3 Q. B. 130). "Relief."

As to what amounts to parochial relief, see *R.* v. *Leycester*, *Ex parte Greenbaum* (1915), 79 J. P. 14.

A person employed by guardians in breaking stones and receiving more than the value of his work may be in receipt of relief (*Magarrill* v. *Whitehaven* (*Overseers of*) (1885), 16 Q. B. D. 242; 49 J. P. 743).

The Medical Relief Disqualification Removal Act, 1885, which removes the disqualification of *voters* at certain elections incurred by reason of their having received medical or surgical assistance or medicine at the expense of the poor rate, has no application to the disqualifications for *offices* imposed by the present section. And the same observation applies to the Representation of the People Act, 1918 (7 & 8 Geo. 5, c. 64), s. 9 (1).

(*e*) A conviction does not disqualify (under this section) unless it is followed by a sentence of imprisonment with hard labour without the option of a fine or some greater punishment, such as penal servitude. An offence punishable on summary conviction is "a crime" within the meaning of the above clause. See *Conybeare* v. *London School Board*, [1891] 1 Q. B. 118; 55 J. P. 151. Convictions.

(*f*) As to adjudication of bankruptcy, see the Bankruptcy Acts, 1883 and 1890. Under these Acts, a person adjudged bankrupt is disqualified for a period of five years for holding the offices of guardian or member of a sanitary authority; but this disqualification is to be removed and cease if and when the adjudication is annulled or the bankrupt obtains his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. A similar provision is contained in sub-s. (4) of the text. These disqualifications are not affected by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), see s. 168 (5) of that Act. Bankruptcy, etc.

With regard to the disqualification arising from an adjudication of bankruptcy or a composition or arrangement with creditors, the following cases may be referred to:

A candidate for election to a local board assigned all his property by deed to a trustee for the benefit of his creditors who should sign the deed, no sum being mentioned in it as a composition to be paid on the debts therein scheduled as due to them, and the creditors signing the deed thereby discharged him from all debts due to them by him:—*Held*, that he was not disqualified under the P. H. A., 1875, Sched. II., r. 5, even though at the time of his election some of his creditors had signed the deed, while others did not sign it till after the election, for the deed was not "a composition with creditors" (*R.* v. *Cooban* (1886), 18 Q. B. D. 269; 51 J. P. 500).

In *Aslatt* v. *Southampton* (*Mayor, etc. of*) (1880), 16 Ch. D. 143, where the disqualifying words (Municipal Corporations Act, 1882, s. 39) related to compounding "by deed," and a debtor had made a composition with his creditors, but not by deed, and had executed a bill of sale to secure a sum advanced to meet the amount of the composition, an injunction was granted to restrain the corporation from declaring his seat vacant. See also *Futcher* v. *Saunders* (1885), 49 J. P. 424, decided on similar words in an earlier Act.

When a firm of partners make an arrangement with the creditors of the firm, every member of the firm makes an arrangement with his creditors within the meaning of this section (*Ward* v. *Radford* (1895), 59 J. P. 632; 11 T. L. R. 587). A candidate whose firm had filed a petition for liquidation, and who had not obtained his certificate of discharge in respect of his partnership estate, his separate creditors never having held any meeting, was held disqualified by the provisions of the P. H. A., 1875,

Note to Section 46.

Sched. II., r. 5, on the ground that the creditors of the separate estate had voted neither for the closing of the liquidation nor for the discharge of the debtor; and, *per* COLERIDGE, L.C.J., he was disqualified by the absence of a certificate of discharge in respect of the partnership estate (*Ex parte Atherton* (1886), 2 T. L. R. 631).

The provision in the text is not limited to compositions and arrangements made under the Bankruptcy Acts, but applies to compositions and arrangements under the Deeds of Arrangement Act, 1887 (now replaced by the Act of 1914) (*Corrigan* v. *Allison* (1900), 64 J. P. 678).

A person whose total indebtedness did not exceed £50, and whose estate was being administered by an order of the county court under s. 122 of the Bankruptcy Act, 1883, was held not to have been "adjudged bankrupt" within the meaning of the disqualifying section (32 (1)) of that Act (*Lowe* v. *Lourie* (1902), 18 T. L. R. 553); but it has since been decided that such a person has made a "composition" with his creditors within the meaning of the text (*Bradfield* v. *Cheltenham Board of Guardians*, [1906] 2 Ch. 371; 70 J. P. 371).

As to the retrospective effect of such disqualification provisions, *cf. Re Pulborough School Board Petition, Bourke* v. *Nutt*, [1894] 1 Q. B. 725; 58 J. P. 572.

Offices.

(*g*) See as to holding office under a committee, *Crump* v. *Lewis*, [1908] 1 K. B. 858; 72 J. P. 149; *Greville-Smith* v. *Tomlin*, [1911] 2 K. B. 9; 75 J. P. 314, where it was held that the text disqualifies a person who is a salaried officer of a joint hospital committee appointed by the council in question and a neighbouring authority. These cases were followed in *Keefe* v. *Shaughnessy*, [1915] 2 I. R. 105, and in *Keefe* v. *McMahon, ibid.* 312. See *Delane* v. *Hillcoat* (1829), 9 B. & C. 310, as to accepting an office but allowing another to take the profits. As to what amounts to a paid office see *Moriarty* v. *O'Donnell*, [1915] 2 I. R. 393: *Lynch* v. *O'Regan, ibid.*, 267.

Interest in contracts

(*h*) The words of the clause are very similar to those in the P. H. A., 1875, Sched. II., r. 64, and the following cases decided with reference to that and similar provisions in other Acts may be referred to:

It is sufficient if the member is concerned in a contract with the authority though he does not participate in the profits. See *Star Steam Laundry Co.* v. *Dukas* (1913), 108 L. T. 367.

As to the general rule of law that no one having fiduciary duties to discharge can be allowed to enter into engagements in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect, see *Transvaal Lands Co.* v. *New Belgium, etc. Land Co.*, [1914] 2 Ch. 488.

The above section does not apply to rate-compounding agreements entered into with a council under the Poor Law Assessment and Collection Act, 1869, s. 3 (*Holden* v. *Southwark Corporation*, [1921] 1 Ch. 550; 85 J. P. 126).

A trustee of a turnpike road who let his horse and cart at a certain sum to the trustees' contractor for use on the particular road, was held liable to a penalty as being interested or concerned in a contract with the turnpike trustees (*Towsey* v. *White* (1826), 5 B. & C. 125; 7 D. & R. 810). The local board of S., who were the town council, having contracted with a person to supply iron railings, an alderman of the borough sold, in the way of his trade, to the contractor, some iron to enable him to complete his contract. It was held that the alderman was not interested in the contract (*Le Feuvre* v. *Lancaster* (1854), 3 El. & Bl. 530; 18 J. P. 198). But as to this case see *Tomkins* v. *Jolliffe* (1887), 51 J. P. 247. There C., who had contracted with a local board to make certain alterations to gas fittings in the town hall, employed the defendant, a member of the board and a builder, to erect scaffolding for the purpose of enabling him to effect the alterations. It was held that the defendant was interested or concerned in a contract with the board.

F. was elected a town councillor in 1846, and was re-elected in 1849. In 1843 he had undertaken to bind the books and documents of the council. No sum was fixed for his remuneration, but in 1849, while he was still engaged in his undertaking, he agreed to complete it for £150, the amount of his disbursements. There was no contract under seal. In July, 1849, he received £50 on account. It was held that he was interested in a contract with the council, though he might not have been able to enforce it for want of the corporate seal (*R.* v. *Francis* (1852), 18 Q. B.

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526; 16 J. P. 664). It was said by ALDERSON, B, that a somewhat similar clause in a local Act did not apply to a contract made before the defendant became a member, though he had not received the money. He said also that "a single bargain, as if the commissioners bought a brush in a shop, would not disqualify the seller, though the price had not been paid" (*Woolley* v. *Kay* (1856), 20 J. P. 776; 1 H. & N. 307). In *Nicholson* v. *Fields* (1862), 7 H. & N. 810, the evidence against a commissioner for being concerned in a contract with the commissioners consisted of an invoice in his writing addressed to the commissioners and charging them for lime supplied on several occasions during four months. It was held that this was sufficient evidence. This decision was followed in *Lewis* v. *Carr* (1876), 1 Ex. D. 484, where BRAMWELL, B., referring to the corresponding clause in the Municipal Corporations Act, 1835, said: "I think if a shilling's worth of stationery were bought of an alderman, there would be a contract between the corporation and that alderman." But, in another place, he added: "I doubt very much whether the legislature intended these words to comprehend the case when there was a trifling dealing over the counter, and when the price of the articles was well known." When a member of a local board received payment of £19 19*s.* 9*d.* from the board, to reimburse him for work done for the surveyor of the board, the work consisting of the use of men and horses at intervals during two years, it was held that he was disqualified (*Fletcher* v. *Hudson* (1881), 7 Q. B. D. 611; 46 J. P. 372).

The defendant's brother entered into a contract with a vestry under the Metropolis Management Act, 1855, and in order to carry it out borrowed money from the defendant, who by way of security took an assignment of the contract. Afterwards, the defendant was elected a member of the vestry. It was held that he was interested in a contract with the vestry (*Hunnings* v. *Williamson* (1883), 11 Q. B. D. 533; 48 J. P. 132). See also *Simpson* v. *Ready* (1844), 12 M. & W. 736 (contract with a councillor's trustee), and *R.* v. *Franklin* (1870), 6 Ir. R. C. L. (councillor as guarantor). Where an officer of a local board was appointed to superintend drainage works as their engineer, receiving by way of remuneration a percentage on the outlay, it was held that he had an interest in the contract between the board and their contractor (*Whiteley* v. *Barley* (1888), 21 Q. B. D. 154; 52 J. P. 595). The defendant, a member of a local board, was employed by persons who had contracted for the performance of certain work on the board's premises to do a portion of the work contracted for. It was held that he had been concerned in contracts entered into by the board within the meaning of the P. H. A., 1875, Sched. II., r. 64 (now repealed). LOPES, L.J., said: "I express no opinion with regard to such very trifling matters as were suggested in the argument, *e.g.*, the purchase of a paint-brush, or a few nails from a member of the board. It may be that the maxim *de minimis non curat lex* would be applicable in such cases" (*Nutton* v. *Wilson* (1889), 22 Q. B. D. 744; 53 J. P. 644). In *R.* v. *Rowlands*, *post*, p. 956, Lord ALVERSTONE, C.J., with reference to this point, said: "I was at first impressed by the fact that the amount of the commission paid was a small amount; but I am now satisfied that we ought not to take into account the smallness of the sum, because the absolute freedom from the position which the entering into any such contract involves should be maintained"; and *cf.* also *Nell* v. *Longbottom*, p. 958, *post*.

The defendant, who was a member of a municipal corporation, carried on business as a jeweller and optician. The optical department was managed by his son, who was not a partner but a paid employee. A contract was made between his son in his own name and the corporation for the supply of spectacles to the children of the schools controlled by the Corporation Education Committee. The contract was carried out by the son, the spectacles were paid for by him with his own cheque, and he received payment in his own name from the corporation and paid the amount so received into his own banking account. The spectacles were supplied in cases bearing the son's name, but the defendant's business address, some of the cases being taken at the expense of the defendant out of his stock. The son alone derived direct pecuniary benefit from the contract, but the shop was provided, and the establishment expenses paid by the defendant, and the fact that the spectacle cases bore his address helped to advertise his business with the consequent probability of increasing his custom. It was held that on these facts there was evidence in which the court could find that the defendant had an interest in a contract with the corporation (*England* v. *Inglis*, [1920] 2 K. B. 636; 84 J. P. 198).

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A. and S. were under contract to repair roads and do other work for a borough council. In October A. dissolved the partnership and made over the contracts to S. In November A. was elected town councillor for a ward in the borough. It was held that A. was disqualified on the ground that he remained liable under his contracts (*cf. R.* v. *Franklin*, *ante*, p. 955). The petitioner had published a notice before the election to the effect that A. was disqualified by reason of the contracts with the council, and the question was publicly discussed in the ward :—*Held*, that votes given for A., whose disqualification was notorious, were thrown away, and that the petitioner (who had the next highest number of votes) must be declared elected (*Cox* v. *Ambrose* (1890), 60 L. J. Q. B. 114 ; 55 J. P. 23). As to the latter point, compare *Hobbs* v. *Morey*, [1904] 1 K. B. 74 ; 68 J. P. 132, where it was held that, as the disqualification of the respondent was not apparent on the face of his nomination, and as notice of his disqualification had not been given to the electorate previous to the election, the votes given for him could not be treated as thrown away, and that the petitioner (the only other candidate) could not be deemed to be elected. This case was followed in *Boyce* v. *White* (1905), 92 L. T. 240 ; 53 W. R. 430.

A member of a school board sold a quantity of gravel and sand to one who had contracted with the board to build certain schools. He knew that they were to be used in the building of the schools, and it was held that he had committed an offence against the Elementary Education Act, 1870, s. 34, as having been concerned in work done under the authority of the board (*Barnacle* v. *Clark*, [1900] 1 Q. B. 279 ; 64 J. P. 87). So, also, a member of a council who supplied coals to the trustees of a school who had an agreement with the council by which the latter eventually paid for the coals, was held to have an interest in such contract (*Cox* v. *Truscott* (1905), 69 J. P. 174 ; 92 L. T. 650) ; see also *Tanfield* v. *Reynolds* (1875), 39 J. P. 293, a case of a contract to do printing for a school board election. A concealed interest in a contract made colourably in the name of another person is sufficient to disqualify (*Walsh* v. *Grimsley* (1900), Times, November 30th). Where a respondent in answer to an advertisement had offered to supply to a council for twelve months certain goods at specified prices and the offer was accepted, it was held that the advertisement, tender, and acceptance constituted a contract in which he had an interest (*Ford* v. *Newth*, [1901] 1 Q. B. 683 ; 65 J. P. 391). Whether a member becomes disqualified merely by supplying goods to a contractor in the ordinary way of business and not knowing for what purpose they are wanted by the contractor has apparently never been decided. It is clear that under such circumstances he is not within the terms of a statute which forbid him to be "knowingly" interested in a contract (*Norton* v. *Taylor*, [1906] A. C. 378 ; 70 J. P. 433) ; but in the case of a section which (like s. 46, *supra*) does not make use of the word "knowingly," it may well be that the absence of knowledge does not affect the question.

Whether a person who has actually performed his part of a contract with a council, but has not received payment, is disqualified or not has never been expressly decided. The better opinion, however, would seem to be that he is, on the ground that until actual payment questions or disputes may arise between him and the authority, and that therefore he is still "concerned or interested" in the contract : see *Ford* v. *Newth*, *supra* ; *Cox* v. *Truscott*, *supra* ; *O'Carroll* v. *Hastings*, [1905] 2 I. R. 590. How long the interest in the contract continues may be important in considering whether an action for penalties has been brought in time : see *Todd* v. *Robinson* (1884), 14 Q. B. D. 739 ; 49 J. P. 278. The disqualification attaches at the moment when a person enters into or becomes concerned or interested in a contract (*Ford* v. *Newth*, *supra*), and a member remains disqualified though his contract is terminated ; where a member has incurred disqualification it is the duty of a council to declare his seat vacant and proceed to another election (*R.* v. *Rowlands*, [1906] 2 K. B. 292 ; 70 J. P. 463). *Cf.* also, as to the duration of the disqualification, *Lewis* v. *Carr*, *ante*, p. 955, and *Cox* v. *Truscott*, *supra*, decided on the differently worded provisions of the Municipal Corporations Acts, 1835 and 1882, and *O'Carroll* v. *Hastings*, *supra*. The ratification by the council of a resolution of a committee releasing a party from his contract with a view to his election cannot relate back to the date of the decision of the committee because the interests of other parties may be affected (*Ford* v. *Newth*, *supra* ; *cf. Hyde* v. *Hosford* (1911), 46 Ir. L. T. 59). As to the liability of a member for contracts entered into by an

agent without his knowledge or against his orders, see *Miles* v. *McIlwraith* (1883), 8 App. Cas. 120. **Note to Section 46.**

In *Kearse* v. *O'Mahony* (1910), 44 Ir. L. T. 231, it was doubted whether the office of rate collector was such a " contract or bargain " as is contemplated by the corresponding Irish provision ; the collector having died insolvent, it was held that his next-of-kin (a councillor) was not interested in the contract or bargain (if any). See *R.* v. *Roscommon JJ.*, [1906] 2 I. R. 173, as to a guardian buying seed potatoes from his board.

In *Melliss* v. *Shirley L. B.* (1884), 16 Q. B. D. 446 ; 50 J. P. 214, it was held that a contract between a local board and an officer of the board was by the P. H. A., 1875, s. 193, altogether void and could not be enforced. The text, however, deals with the question of the disqualification of members, and it would appear from dicta in *Read* v. *Punter* (1898), 14 T. L. R. 455, that contracts which entail disqualification under it are not necessarily void. WILLS, J., appeared to take the view that, if (and only if) a member was present at the meeting which entered into the contract and voted for the contract, the contract would be void, because while voting for the contract *eo instanti* he would be disqualified from entering into it. Whatever may be the position as to contracts entered into whilst a contracting party is a member of an authority, it appears to be clear that the legality of a contract entered into prior to his membership cannot be affected. As to the position in this respect of a contract within s. 193 of the P. H. A., 1875, see *Melliss* v. *Shirley L. B.*, *supra*. COTTON, L.J., in that case seemed to be of opinion that a contract in which an officer became interested after it had been made would not be void, though the officer would be prohibited from taking any benefit under it. And see *City of London Electric Lighting Co.* v. *London Corporation*, [1903] A. C. 434 ; 67 J. P. 437, a case decided under the City of London Sewers Act, 1848, s. 42. See also *Pontefract Corporation* v. *Lowden* (1915), 84 L. J. K. B. 1800 ; 79 J. P. 392.

The stringent provisions of this sub-section are relaxed by the next sub-section and by s. 11 of the Infectious Diseases (Notification) Act, 1889, p. 803, *ante*.

(2) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

(a) In the sale or lease of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood ; or

(b) In any newspaper in which any advertisement relating to the affairs of the council or board is inserted ; or

(c) In any contract with the council or board as a shareholder in any joint stock company ; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature this prohibition may be dispensed with by the county council.

Excepted contracts and interests.

The exceptions as to sales or leases of lands and loans of money are similar to those contained in the P. H. A., 1875, Sched. II., r. 64 (repealed by this Act). Reference may be made to *R.* v. *Gaskarth* (1880), 5 Q. B. D. 321 : 44 J. P. 507, where it was held that a member of a sanitary authority was not disqualified by taking from the authority a lease of their sewage farm containing covenants by them to supply, and by him to use on the demised premises, the sewage of the district. LUSH, J., said that the words were intended to cover a lease of a farm for agricultural and sewage purposes, whether made by or to the sanitary authority.

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This case was followed in *Local Government Board* v. *Eivers*, [1902] 2 I. R. 262. It has also been held that the letting of a building for the purposes of a polling station at an election is within this exception (*Nell* v. *Longbottom*, [1894] 1 Q. B. 767). A member might also lawfully sell to his council a right of way, which is an incorporeal hereditament and so included in the word "lands." See Interpretation Act, 1889, s. 3, which provides that the expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure (*Jones* v. *Watts* (1890), 43 Ch. D. 574).

The remainder of clause (a) was new. It enables the owner or occupier of a quarry or gravel pit who is a member of the council to sell stone or gravel, and the owner or occupier of any land to sell other materials from his land for the making or repair of highways or bridges. (Compare 54 & 55 Vict. c. 63, s. 5.) It further enables a member to contract with his council for the transport of materials for such repairs, with this limitation, that the highways or bridges must be in his own immediate neighbourhood. Formerly a "waywarden" who desired to contract for the supply or cartage of materials for his parish required a justices' licence under 27 & 28 Vict. c. 101, s. 20, but no such licence is required by a member of a district council in cases coming within this clause (*Buckley* v. *Hanson* (1898), 62 J. P. 119; 77 L. T. 664). Selling sand or gravel for purposes other than the repair of highways or bridges would not be within the protection of the sub-section (*Barnacle* v. *Clark* (1899), 69 L. J. Q. B. 15; 81 L. T. 484).

Clauses (b) and (c) resemble the similar provisions in the P. H. A., 1875, Sched. II., r. 64 (now repealed), except that the prohibition which may be dispensed with under clause (c) may be dispensed with by the county council instead of the L. G. B. A further power of dispensation by the county council is contained in the next sub-section.

Semble, the provision as to shareholders will not cover shareholders who are also directors or officers, if as such they have a special interest in the contract.

(3) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

This provision applies only to parish councillors, not to district councillors. And it extends only to disqualifications arising out of interests in contracts under sub-s. (1) (e). The removal of the disqualification will probably be made in most cases on the application of the councillor or candidate.

(4) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

This provision is the same as that contained in the Bankruptcy Act, 1883, s. 32, already noticed.

In the case of composition or arrangement the disqualification will continue during the full period of five years unless in the meantime the debts are paid in full. As to the meaning of "payment of debts in full," see *In re Keet*, [1905] 2 K. B. 666.

(5) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

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Other disqualifications of guardians and rural councillors.

This provision is necessary, as there are some disqualifications attaching to the office of guardian which do not attach to the office of a rural district councillor under this Act. Thus by the Poor Law Amendment Act, 1842, s. 14, no assistant overseer, paid officer engaged in the administration of the poor laws, and no person who having been such a paid officer has been dismissed under the Poor Law Amendment Act, 1834, within five years previously can be a guardian anywhere; further no person receiving a fixed salary or emolument from the poor rates in any parish or union can be a guardian in it. The Poor Law Board considered that the term "paid officer" included a treasurer, chaplain, public vaccinator, and registrar of births and deaths. A salary paid out of a fund supplied in part (by precepts) out of the poor rate has been held not to be paid out of the poor rate (*R.* v. *Rawlins* (1885), 15 Q. B. D. 382; 50 J. P. 5). These disqualifications have no application to urban district councillors.

(6) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant.

Absence from meetings.

A somewhat similar provision relating to the absence *from the borough* of councillors of a borough is contained in the Municipal Corporations Act, 1882, s. 39. Compare also s. 10 (1) of the Trustee Act, 1893, and see *In re Walker*, *Summers* v. *Barrow*, [1901] 1 Ch. 259, decided thereunder. But relief from disqualification by reason of absence as an officer or soldier of the auxiliary or reserve forces on active service or on service beyond the seas, is given by the Members of Local Authorities Relief Act, 1900, *post*, p. 1010. As to what amounts to an "attendance" at a meeting reference may be made to *Richardson* v. *Methley School Board*, *post*, p. 960. The length of absence is to be determined by reckoning from the first meeting which the member in question failed to attend, and not from the last one which he actually attended (*Kershaw* v. *Shoreditch Borough Council* (1906), 70 J. P. 190; 95 L. T. 55). A councillor whose absence is due to illness need not notify such illness to the council (*R.* v. *Hunton* (1911), 75 J. P. 335).

As to whether it is necessary that the seat should be declared vacant under the next sub-section before a vacancy actually takes place, see notes thereto.

(7) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant.

Declaration of vacancy.

The L. G. B. informed a district council that they had been advised by the Law Officers that the office of a member who had been absent did not become vacant until the council had declared the office to be vacant. A council must, as the Law Officers advised, consider whether illness or an excuse approved by them prevents the office from being vacated, and they further advised that the approval of a reason for absence may be effectually given after the expiration of six months of absence. In support of this view reference may be made to the similar provision in the Municipal Corporations Act, 1882, s. 39, and cases decided with reference to it (*R.* v. *Leeds* (*Mayor, etc. of*) (1838), 7 A. & E. 963; *Hardwick* v. *Brown* (1873), L. R. 8 C. P. 406; 37 J. P. 407; *R.* v. *Welshpool* (*Mayor, etc. of*) (1876), 35 L. T. 594). But in *R.* v. *Hunton*, *supra*, the court appeared to think that if the absence is not due to illness the councillor is disqualified from acting, at all events until his excuse has been considered and accepted by the council; and that he cannot by merely resuming attendance do away with the disqualification. See also *R.* v. *Kilkenny JJ.*, [1912] 2 I. R. 1. There under differently worded provisions it was held in

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proceedings for a penalty that absence for six months amounted to a "disqualification" without any "declaration" of a vacancy and that the "illness or reason approved by the council" was a matter of defence to be proved by evidence before the justices.

It was held under the Education Act, 1870, that a school board was not entitled to proceed to the election of a new member without first giving the defaulting member an opportunity of explaining or excusing his absence (*Richardson* v. *Methley School Board*, [1893] 3 Ch. 510).

(8) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

Penalty.

This fine will be recoverable before justices in manner provided by the Summary Jurisdiction Acts: see 42 & 43 Vict. c. 49, s. 51. Any person may prosecute (*Kenealy* v. *O'Keeffe*, [1901] 2 I. R. 39). But the fine is payable to the treasurer of the county under 11 & 12 Vict. c. 43, s. 31. The amount of the fine to be imposed in any given case will be in the discretion of the justices. There is no appeal to quarter sessions against the conviction, but a special case may be stated upon any point of law.

A person disqualified may also be restrained by injunction from acting (*Walsh* v. *Grimsley*, *ante*, p. 956).

It has been held that a person duly elected is not "disqualified" within the corresponding provision of the Irish Act by reason of his not having made the declaration of acceptance of office (*R.* v. *Longford JJ.*, [1903] 2 I. R. 677).

Under a similar provision in the Municipal Corporations Act, 1882, a disqualified person was held liable to a fine though the time for presenting an election petition had elapsed (*De Souza* v. *Cobden*, [1891] 1 Q. B. 687; 55 J. P. 565). Note that a conviction under this sub-section will not of itself amount to a disqualification under sub-s. (1) (c). Compare the provisions of an Irish statute and the case of *Hastings* v. *O'Carroll*, [1915] 2 I. R. 4.

(9) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council. . . .

The remainder of this section related to London auditors and is repealed.

* * * * * *

Supplemental provisions as to elections, polls and tenure of office.

48.—(1) . . .

(2) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act (*a*), and shall provide, amongst other things—

(i) For every candidate being nominated in writing by two parochial electors as proposer and seconder and no more (*b*);

(ii) For preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district (*c*);

(iii) For preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward (*d*);

(iv) For fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so,

however, that the poll shall always be open between the hours of six and eight in the evening (*e*);

(v) For the polls at elections held at the same date and in the same area being taken together, except where this is impracticable (*f*);

(vi) For the appointment of returning officers for the elections (*g*).

(*a*) For the Local Government Board must now be read the Secretary of State. See the Ministry of Health Registrations and Elections Transfer Order, 1921.

For the rules now in force see App. II., *post*. The rules hitherto in force have been amended by the order of 1919 referred to in the note to s. 23 (5), *ante*.

(*b*) The rules prescribe the form of the nomination paper and the mode in which it is to be signed. It has been held with reference to the Rural District Councillors Election Order, 1898, that a nomination paper may be signed by the proposer and seconder before the name of the candidate is filled in (*Cox* v. *Davies*, [1898] 2 Q. B. 202).

Where, at a contested election of county councillors, a candidate dies between the date of the nomination and that of the poll, it is the duty of the returning officer to countermand the notice of the poll and to stop the proceedings (*R.* v. *Stewart*, [1898] 1 Q. B. 552; 62 J. P. 229). This decision was based on the view that a provision in s. 1 of the Ballot Act, 1872, was applied to the election of county councillors, but that section is not one of the provisions of the Act of 1872 applied by the election orders to elections under this Act. Where a candidate's death was not reported to the returning officer until after the poll had opened, it was held that the poll should have been allowed to proceed (*Urquhart* v. *Air*, [1910] S. C. 54). The election rules do not prescribe the course which should be adopted by the returning officer in a case of this kind, and he should apply to the L. G. B. for a direction, as in the rules the Board have reserved to themselves a power of giving directions as to the conduct of an election.

(*c*) A voter at an election of guardians or district councillors may nominate or vote only once, though he may be qualified to nominate or vote in more than one parish or area. In such a case he may elect in which parish or area in the same union or district he proposes to nominate or vote.

(*d*) Where a parish is divided into wards, no elector is to nominate or vote in more than one ward.

(*e*) The poll must always be kept open from 6 p.m. to 8 p.m., but, subject to this, the hours are to be fixed by the county council.

(*f*) The intention appears to be that in rural districts the elections of parish and rural district councillors shall be conducted at the same time, and in urban districts the election of guardians and urban district councillors. Reference should be made to the rules to determine in what cases the polls at elections of parish and rural district councillors and of guardians and urban district councillors shall be taken together. In boroughs in ordinary years the guardians will come into office on April 15th (s. 20 (6), *ante*, p. 925), while the borough councillors are elected on November 1st, so that these elections cannot be held together.

(*g*) By r. 12 of the Guardians (Outside London) Election Order, 1898, if any parish is co-extensive with an urban district for which an election of urban district councillors is to be held other than a borough, or with any ward or wards of any such urban district, or is wholly comprised in any such district which is not divided into wards, or in any one ward of such a district which is divided into wards, the poll for the election of guardians for the parish and any poll for the election of urban district councillors shall be taken together, and by r. 13 under such circumstances the returning officer at the election of urban district councillors shall be the deputy returning officer for certain purposes in relation to the poll for the election of guardians. It was held under these rules that a clerk to an urban district council was not entitled to act as deputy returning officer for the election of guardians of a parish which was not co-extensive with the urban district or with any ward or wards of such district. The parish contained the whole of three wards and a portion of a fourth ward, but the clerk based his claim on the fact that the urban district was co-extensive with the area of three parishes in the union (*R.* v. *Carter* (1904),

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68 J. P. 466). The county council might have given directions to the contrary, but had not done so.

Under the rules the returning officer is not entitled to vote unless there is a tie. If he does, a petition will lie to unseat the candidate for whom he so votes (*Re Whitley and Monkseaton Election, Brittain* v. *Ritchie* (1899), 43 Sol. J. 532), and he himself will be liable to an action for penalties (*Brittain* v. *Whitehorn* (1900), Times, March 30th). Neither a returning officer nor a deputy returning officer may give a casting vote in the case of a tie unless he is a voter in the place (*i.e.*, ward or other district) for which the election is held. See *Watts* v. *Hemming* (1907), 71 J. P. 504, where on such a vote being given the person who received the vote was unseated on petition. See also the same case upon the question of the costs of a petition under such circumstances.

(3) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts), shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

(a) Section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

(b) Section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

Section 74 of the Municipal Corporations Act, 1882, deals with certain offences in relation to nomination papers. It provides that if any person forges (as to forged papers see now the Forgery Act, 1913) or fraudulently defaces or fraudulently destroys any nomination paper, or knowingly delivers any forged nomination paper, he shall be guilty of a misdemeanour and liable to imprisonment, with or without hard labour, for a term not exceeding six months. An attempt to commit any of these offences is punishable in the same way. Section 75 relates to offences by overseers and returning officers. The rules contain adaptations of both these sections. Part IV. relates to corrupt practices and election petitions, and as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 was already applicable to elections of borough councillors, local boards, improvement commissioners, and guardians. The provisions of both these Acts are set out in App. I., *post*, Vol. II., and they are applied to elections under this Act with slight modifications by the rules. See App. I. also for the Municipal Elections (Corrupt and Illegal Practices) Act, 1911.

Section 6 of the Ballot Act, 1872, enables the returning officer to use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is defrayed out of a local rate, but he must make good any damage done to the room and defray any expense consequent on its being used for the poll. The text enables the room to be used for hearing objections to nomination papers and for counting votes.

Section 37 of the Act of 1884 exempts certain elections from the provisions contained in the Act as to maximum expenses. Such exemption extends to elections under this Act.

Section 48.

(4) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections (*a*) of councillors of a borough, and to the acceptance of office (*b*), resignation (*c*), re-eligibility of holders of office (*d*), and the filling of casual vacancies (*e*), and section fifty-six of that Act (*f*), shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, *and of members of the local board of Woolwich* (*g*), and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same (*h*). Provided that—

(a) The provisions as to resignation shall not apply to guardians, and district councillors of a rural district shall be in the same position with respect to resignation as members of a board of guardians (*i*); and

(b) Nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election (*k*); and

(c) The rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.

(*a*) In municipal elections the expenses are payable out of the borough fund (Municipal Corporations Act, 1882, s. 140, Sched. III., Part 3, r. (5), and Sched. V., Part 2, r. (1)). As to the expenses at other elections, see the rules which are set out in App. II., *post*, Vol. II.

(*b*) In a borough every qualified person elected to a corporate office must accept the office or pay to the council a fine (in the case of a councillor) of such amount, not exceeding £50, as may be fixed by a byelaw of the council, or if there is no byelaw, £25 (Municipal Corporations Act, 1882, s. 34). In the case of a district council the fine is such an amount not exceeding £50, as the council by regulation determine, or if there are no regulations determining fines, £20 (Sched. V. of the Election Order).

As to the various exemptions from serving in public offices, see note to the Post Office Act, 1908, s. 43, in App. I., *post*, Vol. II.

(*c*) In a borough a councillor may resign at any time by writing, signed by him and delivered to the town clerk, on payment of the fine provided for non-acceptance of office (Municipal Corporations Act, 1882, s. 36), and on delivery of the writing and payment of the fine the resignation is complete and cannot afterwards be withdrawn (*R.* v. *Mayor of Wigan* (1885), 14 Q. B. D. 908; 49 J. P. 372); although there is no actual vacancy until the council "declare" one (*Pease* v. *Lowden*, [1899] 1 Q. B. 386; 63 J. P. 56). These provisions are only to apply to urban district councillors (see sub-s. (a), *supra*). The rules adapt this provision in the case of urban district councils other than those of boroughs by substituting the clerk of the urban district council for the town clerk.

(*d*) In a borough a person ceasing to hold a corporate office, unless disqualified to hold the office, is re-eligible (Municipal Corporations Act, 1882, s. 37). The rules now in force repeat this provision.

(*e*) By the Municipal Corporations Act, 1882, s. 40, on a casual vacancy in a corporate office, an election is to be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected is to hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and is then to go out of office. In case of more than one casual vacancy being filled at the same election, the councillor elected

Note to Section 48.

by the smallest number of votes is to be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes is to be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or any doubt arises, the order of rotation is to be determined by the council. Section 66 of the same Act prescribed the time for the filling of casual vacancies. The rules adapting these enactments are set out in App. II., *post*, Vol. II.; effect is given therein to proviso (b), *supra*. Non-acceptance of office creates a casual vacancy.

(*f*) Section 56 of the Municipal Corporations Act, 1882, provides as follows:

(1) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4) If there is no valid nomination the retiring councillors shall be deemed to be re-elected.

(*g*) These words relating to the local board of Woolwich were repealed by 62 & 63 Vict. c. 14, s. 35 (2), and Sched. III.

(*h*) Metropolitan borough councils were substituted for the vestries by s. 4 of London Government Act, 1899 (62 & 63 Vict. c. 14).

(*i*) The resignation of guardians is regulated by 5 & 6 Vict. c. 57, s. 11, which enables the Ministry of Health to accept the resignation of any person "elected as" a guardian for any cause they may deem reasonable.

The resignation of a rural district councillor elected in the ordinary way requires to be accepted by the Ministry of Health in the same manner as that of a guardian; but the Ministry apparently consider that a chairman elected from outside the council can resign without any such consent.

(*k*) This proviso is similar to that applicable to elections of county councillors in 54 & 55 Vict. c. 68, s. 1 (4). The law officers have advised that unless the person whose retirement has caused a casual vacancy would himself have retired at the election to be held within six months after the occurrence of the casual vacancy a special election to fill the vacancy must be held (60 J. P. 800).

(5) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such . . . vestry as aforesaid, . . . and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

Omitted words relating to the Woolwich local board and London auditors, were repealed by 62 & 63 Vict. c. 14, s. 35 (2), and Sched. III.

The text does not in any way indicate the kind of difficulties for which it provides and the language is so wide and vague that it might apply to any objection which could be raised to the validity of an election. It will not, however, supersede the ordinary modes of trying a question of validity of an election, viz., by election petition or *quo warranto*. The section has been made use of in cases where, by reason of equality of votes, there have been double returns. It may be applicable to cases where a candidate has died after nomination and before poll. See the observations as to the power of the county council under this section and s. 80 (1) *post*, p. 987 (now practically re-enacted as to elections other than first elections by the Local Government (Elections) Act, 1896), in *R.* v. *Miles* (*Ex parte Col*... (1895), 64 L. J. Q. B. 420; 59 J. P. 407.

(6) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge, or, except in the prescribed cases, for such reasonable charge as may be prescribed. Section 48.

The conditions and rates of charge will be prescribed by the Ministry of Health: see s. 75 (2), *post*, at p. 985.

(7) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.

The expenses here referred to are those of the returning officer.

* * * * * *

50. If, in the case of a rural parish or of any urban parish in respect to which the power of appointing overseers has been transferred under this Act, notice in the prescribed form of the appointment of overseers is not received by the guardians of the poor law union comprising the parish within three weeks after the fifteenth day of April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians shall make the appointment or fill the vacancy, and any overseer appointed by the guardians shall supersede any overseer previously appointed whose appointment has not been notified. Any such notice shall be admissible as evidence that the appointment has been duly made. Supplemental provisions as to overseers.

The power of appointing overseers in an urban parish may be transferred to the urban authority or any representative body within the district, by order of the Ministry of Health under s. 33, *ante*, p. 943. When the power is transferred to an urban authority they must give notice to the guardians under this section, and such notice is admissible as evidence that the appointment was duly made.

The section prescribes a time within which the notice is to be given, viz., within three weeks after April 15th (the day on which the new parish council comes into office in each year) or after the occurrence of a vacancy in the office of overseer. If the notice is not received by the guardians within that period, they are required by this section to make the appointment themselves, and the overseer appointed by them is to supersede any previously appointed overseer whose appointment has not been notified. This supersession will, it is submitted, only take place as from the date of the appointment of the overseer by the board of guardians, and acts done before that date by any overseer whose appointment fails for want of notification will not be void.

Parish and District Councils.

* * * * * *

52. . . . Supplemental provisions as to transfer of powers.

(3) The consent of justices shall not be required for the sale of land belonging to a parish which has been used for materials for the repair

Section 52. of highways or for the purchase of land with the proceeds of any such sale.

By s. 48 of the Highway Act, 1835, where land has been allotted to parishes under the Inclosure Acts (see the Inclosure Act, 1845, s. 72), for the purpose of obtaining materials for the repair of the highways in such parish, and the materials have been exhausted: "It shall and may be lawful for the surveyor of such parish for the time being, by and with the consent of the vestry, and he is hereby authorised and required, with the consent in writing of the justices of the peace at a special sessions for the highways, to sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said parcels of land from which the said materials have been so exhausted as aforesaid, at and for such price as the said justices may deem fair and reasonable, and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof." The 8 & 9 Vict. c. 71 extended these provisions to all lands belonging to parishes, or to the surveyor of highways for the purpose of the repair of highways, the materials in which have been exhausted.

In an urban district the powers of the surveyor, and also those given to the vestry by the Act of 1835, are exercisable by the urban authority (P. H. A., 1875, s. 144). In a rural district such powers are exercisable by the rural district council (see s. 25 of this Act).

The consent of justices required by s. 48 of the Act of 1835 is no longer necessary.

Where the lands have been acquired by a parish, not only for the purpose of the supply of material for the repair of the roads, but for other purposes also, s. 48 of the Act of 1835 does not apply, and in order to sell the land, when the materials are exhausted or are not suitable, and the land is not available for the other purposes, recourse must be had to the Exhausted Parish Lands Act, 1876. Under that Act the land is to be dealt with as parish property under the 5 & 6 Will. 4, c. 69, and the 5 & 6 Vict. c. 18, and no consent of justices to the sale is required.

. . . . . .

Supplemental provisions as to adoptive Acts.

53.—(1) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

The adoptive Acts are enumerated in s. 7 of this Act. They are the Lighting and Watching Act, 1833; the Baths and Washhouses Acts, 1846 to 1882; the Burial Acts, 1852 to 1906; the Public Improvements Act, 1860; and the Public Libraries Acts, 1892 to 1919.

(2) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in the area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

Note to Section 53.

Under sub-s. (1) the executive authority, *e.g.*, a burial board, lighting inspectors, or parish meeting, "*may* transfer the powers, duties, and liabilities of the authority"; under this sub-section "the powers and duties of the authority *shall* be transferred." See sub-s. (3), *infra*, and s. 67, *post*, p. 979, as to the effect of this transfer.

This sub-section had an extensive application, particularly in regard to burial areas. In many instances before the passing of this Act a parish in which the Burial Acts were in force was partly in an urban district. That part, speaking generally, became a separate parish. In such cases the provisions of this sub-section applied, and the powers and duties of the commissioners or other authority under the adoptive Act passed upon the appointed day to the governing bodies of the areas which were wholly or partly comprised in the area under the adoptive Act. These governing bodies are, in the case of a rural parish wholly or partly comprised in the area under the adoptive Act, the parish council, where it exists, and where it does not exist, the parish meeting; in the case of an urban district comprising part of the area under the adoptive Act, the urban district council.

The bodies to whom these powers and duties were jointly transferred were required to appoint a joint committee to exercise and perform them. Doubts having arisen whether the provisions of s. 57, *post*, p. 971, were applicable to a joint committee appointed under this section, the Local Government (Joint Committees) Act, 1897, *post*, p. 1007, was passed to clear up part of the difficulty. By that Act in the case of a joint committee appointed under this section for the purposes of the Burial Acts, expenses are to be defrayed and money borrowed and receipts divided by the councils appointing the committee; the consent of the Ministry of Health, but no other consent, is necessary to borrowing; and the proceedings of the committee are regulated by Part IV. of the First Schedule to this Act. Differences as to the constitution of any committee may be determined by the Ministry; and parish meetings joining in the appointment of a committee have the same power of borrowing as a parish council.

Notwithstanding the provision in the Act of 1897 that no other consent than that of the Ministry of Health shall be necessary to the borrowing of money by the councils appointing the joint committee, the Ministry now always require evidence of the consent of the parish meeting of a rural parish and of the vestry of an urban parish to the incurring of the expenditure, having been advised that this is still necessary. The consents of those bodies are also required to the site selected for a burial ground: see s. 7 (3) of this Act, and the Burial Act, 1852, ss. 19, 26.

The Ministry of Health state that they are advised that a grant of exclusive rights of burial or a conveyance of lands held for burial purposes cannot be made by a joint committee formed under s. 53 (2). In order to be binding at law a grant or conveyance must be executed and sealed by all the councils or meetings covering the area of the superseded burial board. The action of the committee, however, binds all the councils, so that they can be compelled by suit for specific performance, or by *mandamus*, to affix their seals in order to carry out what has been agreed to by the joint committee.

Similarly lands purchased by a joint committee of this kind must be conveyed to the constituent councils.

In the view of the Ministry of Health only members of the appointing councils are eligible to serve on a joint committee under s. 53.

The provision made by the text was not intended to be permanent; it is to hold good "until other provision is made in pursuance of this Act." The reference seems to be to the power given by sub-s. (4), *infra*, to a county council to alter the boundaries of an area under the adoptive Act; but where on the appointed day such an area extended into several rural parishes or urban districts, it will probably be found a matter of great difficulty to bring it within the area of one governing body.

(3) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the

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rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

This obscurely-worded clause must be interpreted in the light of s. 67, *post*, p. 979. The meaning seems to be that when a parish council (under sub-s. (1)) or the governing bodies mentioned in sub-s. (2) become invested with the powers and duties of a previously existing authority under an adoptive Act, the benefit and the burden of the property, debts, and liabilities of the superseded authority are to remain the benefit and burden of the area of that authority. Where that area is a part of a rural parish and a transfer has been made under sub-s. (1), the parish council will be the authority for the execution of the Act, but the expenses of the execution will be paid out of the rate levied under the adoptive Act upon the part of the parish which has adopted it, and not out of a rate levied upon the whole parish. On the other hand, the income (if any) arising out of the execution of the adoptive Act will go in reduction of the rate under the adoptive Act, and not in augmentation of the general revenues of the parish. Where the area under the adoptive Act is made up of parts of different parishes (whether rural or not), the executive authority will be the bodies mentioned in sub-s. (2), acting by their joint committee. The rate will be levied as before the transfer upon the area which has adopted the Act, each part of a parish contributing its apportioned part and having credited to it its apportioned share of the revenue arising under the Act. Provision is made by the Local Government (Joint Committees) Act, 1897, *post*, at p. 1007, as to how the apportionment is to be made in the case of a joint committee for the purposes of the Burial Acts; in other cases no provision is made, but presumably the apportionment may be made by the bodies appointing the joint committee upon the basis of rateable value.

The fund for defraying expenses is not altered by the transfer of powers and duties. For instance, it would appear from *R.* v. *Connah's Quay Overseers*, *post*, p. 977, that the share of the expenses of a joint burial committee to be defrayed by an urban council is payable out of the poor rate, not the general district rate.

By the L. G. A., 1888, s. 100 (incorporated with this Act by s. 75, *post*, p. 985), the expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for that Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose. See cases collected in note to the L. G. A., 1888, s. 62 (1), at p. 776, *ante*, as to the meaning to be attached to the word "liabilities." See also *Nash* v. *Rochford R. D. C.* cited in the note to s. 25 (1), *ante*, p. 933.

Agreements may be made under s. 68, *post*, p. 980, as to the adjustment of property and liabilities between the authorities interested, and questions as to the transfer of powers, duties, and liabilities may be determined summarily by the High Court under s. 70, *post*, p. 982.

(4) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

The powers of a county council under this sub-section can only be exercised upon the application of a parish council. No power to apply is given to a district council unless an order is first made under s. 33, *ante*, p. 943, giving it the power of a parish council under the sub-section. The power to "alter the boundaries" does not empower a county council to divide an area into distinct areas. Thus an order of a county council purporting to do this in relation to a burial area comprising two rural parishes would be *ultra vires*. It is also extremely doubtful whether an order under this sub-section would be valid which purported to alter an area under the adoptive Acts which was not in existence on the appointed day. See the word "such" in the sub-section.

54.—(1) Where a new borough is created, or any other new urban district is constituted, or the area of an urban district is extended, then— **Section 54.** —— Effect on parish council of constitution of urban district.

(a) As respects any rural parish or part of a rural parish which will be comprised in the borough or urban district, provision shall be made, either by the constitution of a new parish or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and

(b) As respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and

(c) Provision shall also where necessary be made for the adjustment of any property, debts, and liabilities affected by the said creation, constitution, or extension.

A new borough is created by charter of the King in Council under Part XI. of the Municipal Corporations Act, 1882. A new urban district other than a borough is created by order of the county council confirmed by the Ministry of Health under the L. G. A., 1888, s. 57. Under the same section and in the same manner the area of an urban district other than a borough may be extended. The boundaries of a borough may be extended under s. 54 of the same Act by Provisional Order of the Ministry of Health confirmed by Act of Parliament.

The necessary consequence of creating or extending an urban district (unless the newly-included part is already part of an urban district) is to take in all, or part of one or more rural parishes. Such parts are by the order to be made separate parishes, or are to be annexed to parishes already within the borough or district, and provision is to be made for the appointment of overseers as stated in the text. Similar provision is to be made for the remainder of a rural parish, of which part has been taken into the borough or district. And where necessary there is to be an adjustment of property, debts, and liabilities.

(2) The provision aforesaid shall be made—

(a) Where a new borough is created, by a scheme under section two hundred and thirteen of the Municipal Corporations Act, 1882 (*a*);

(b) Where any other new urban district is constituted, by an order of the county council under section fifty-seven of the Local Government Act, 1888;

(c) Where the area of an urban district is extended, by an Order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888 (*b*).

(*a*) Under the Municipal Corporations Act, 1882, s. 213, the "Committee of Council" may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority. Such scheme is to provide for the matters mentioned in the preceding sub-section.

(*b*) See the sections referred to, *ante*, pp. 768, 770.

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(3) Where the area of an urban district is diminished this section shall apply with the necessary modifications.

This will generally happen when a borough is extended so as to include part of another urban district. When the sub-section applies the order or scheme must make a provision corresponding to those contained in sub-s. (1), with such modifications as are necessary to make that sub-section applicable to an urban parish.

Power to change name of district or parish.

55. . . .

(3) Any district council may, with the sanction of the county council, change their name and the name of their district.

The district council itself is the body to decide whether the name shall be changed or not; but the consent of the county council is necessary. Section 311 of the P. H. A., 1875, under which a local board might change its name with the sanction of the L. G. B. (now the Ministry of Health), is still in force, but in practice is never used.

(4) Every change of name made in pursuance of this section shall be published in such manner as the authority authorising the change may direct, and shall be notified to the Local Government Board.

The authorising authority will, it seems, be in all cases the county council.

(5) Any such change of name shall not affect any rights or obligations of any parish, district, council, authority, or person, or render defective any legal proceedings, and any legal proceedings may be continued or commenced as if there were no change of name.

As to the transfer of stock standing in the name of a district council upon a change of name under this Act, see 58 & 59 Vict. c. 32, *post*, p. 1000.

Committees of parish or district councils.

56.—(1) A parish or district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval.

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

This provision applies to all parish councils and to rural district councils, and to the councils of urban districts other than boroughs (sub-s. (4)). So far as it relates to district councils, it is in substitution for ss. 200, 201 (*ante*, pp. 465, 466) of the P. H. A., 1875, which are repealed by this Act (see Sched. II.), the latter section entirely, the former except so far as it applies to boroughs. Under the new provision the constitution of these committees of district councils is altered; they need no longer consist exclusively of members of the council.

The effect of the proviso upon the earlier part of the clause is not quite clear, but it appears that under that part the district council may delegate to the committee any of their powers, and any delegated power may be exercised by the committee as if they were the district council, as the case may be, but the acts of the

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committee will always require the approval of the council which appointed it, and will not be valid until that approval has been obtained. An exception to this rule is made by the proviso in cases where a district council appoints a committee for purposes of the Public Health or Highway Acts; in such cases the district council may authorise the committee to institute certain proceedings or to do certain acts, and in respect of such proceedings or acts no subsequent confirmation by the district council will be required. But no such authorisation can be given with respect to raising loans or making rates or contracts. All committees will retire at the next annual meeting after their appointment. The annual meeting of a district counci is to be held as soon as may be after April 15th (s. 59 (1), *post*, p. 974, and P. H. A., 1875, s. 199, and First Schedule, Part 1, Rule 11, *ante*, pp. 465, 675).

On the approval of the council being given the acts of a committee become valid as from the time they were done upon the ordinary principles of ratification by a principal of the acts of his agent (*Firth* v. *Staines*, [1897] 2 Q. B. 70; 61 J. P. 452; *Hussey* v. *Exeter Corporation* (1918), 87 L. J. Ch. 443; 82 J. P. 67; *R.* v. *Chapman*, [1918] 2 K. B. 298; 82 J. P. 229). But see also *Bowyer* v. *Mather*, [1919] 1 K. B. 419; 83 J. P. 50. See further, as to the acts of committees, note (*a*) under s. 174 of the Public Health Act, 1875, *ante*, at p. 398.

It would seem that a council appointing a committee does not permanently resign its control over matters entrusted to such committee, but can at any time resume such control (*Huth* v. *Clarke* (1890), 25 Q. B. D. 391; 55 J. P. 86). As to the power of a member of a committee to resign his post thereon, see *R.* v. *Sunderland Corporation*, [1911] 2 K. B. 458; 75 J. P. 365.

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(3) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect.

Part 4 of the First Schedule deals with the proceedings of committees of parish or district councils, but merely empowers the appointing council to frame regulations as to the quorum, proceedings, place of meeting, and area of authority of a committee, and subject to such regulations enables a committee to regulate its own quorum, proceedings, and place of meeting, and gives a second or casting vote to the chairman of the committee. See Sched. I., Part 4, *post*, p. 997.

The rules applicable to committees of local authorities contained in Sched. I. of the P. H. A., 1875, are repealed by this Act: see Sched. II., *post*, p. 999.

(4) This section shall not apply to the council of a borough.

Section 200 of the P. H. A., 1875, *ante*, p. 465, still applies to the appointment of committees by councils of boroughs.

Joint committees.

57.—(1) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.

Under this sub-section joint committees may be appointed by two or more district councils, by two or more parish councils, and by any number of parish and district councils for any purpose in which the appointing councils are jointly interested. Such purposes are numerous, being in fact all the purposes for which combinations of district councils (without the setting up of a joint board—see s. 279 of the P. H. A., 1875) are authorised by s. 285 of that Act and other enactments, and for which parish councils may act jointly under the present Act.

In a case, however, in which an urban district council and a parish council proposed to combine and appoint a joint committee under the section for the provision

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of a fire engine, the L. G. B. expressed doubt whether such a course was legally practicable seeing that the powers which the two councils could exercise were not identical. See s. 171 (2) of the P. H. A., 1875, and ss. 6 (1) (c) (ii) and 7 (1) of the present Act. The point could be met if the rural council obtained urban powers in respect of the rural parish, and then combined with the urban council.

It will be noticed that very large powers may be conferred upon a joint committee by the appointing councils under the present clause.

As to a paid officer of such a joint committee being disqualified for membership of one of the appointing councils, see *Greville-Smith* v. *Tomlin*, p. 954, *ante*.

Committees appointed under s. 57 are of a different character from those acting under s. 53. The Local Government (Joint Committees) Act, 1897, does not apply to a voluntary combination under s. 57 and there is no statutory provision for the settlement of disputes as to the constitution of such a committee.

(2) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

It will be observed that the power to make contracts is not reserved, as it is under s. 56 (1), in the case of a committee authorised by a district council to exercise their powers under the Public Health or Highways Acts.

(3) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

As to the annual meetings of district councils, see note to s. 56 (1), *supra*.

The sub-section inferentially allows a joint committee to be continued in office for a period of fourteen days after the annual meeting of any of the appointing councils, and the reason for this was doubtless as follows, viz., one appointing council might meet on April 16th and the other on April 20th, and, but for this provision, there would for a period of four days be no committee in existence to carry on the work entrusted to the joint committee.

(4) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

(5) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

The reference is to s. 56 (2) of the Act. Where a parish council is about to join in appointing a joint committee with power to perform duties in relation to a part of the parish having a defined boundary and separate interests, the council will be bound, upon the request of a parish meeting held for the part, to appoint a representative or representatives of that part to sit upon the joint committee.

Audit of accounts of district and parish councils, and inspection.

58.—(1) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

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The accounts in a borough are audited half-yearly under the Municipal Corporations Act, 1882, s. 26, and this applies to the accounts of the corporation as urban sanitary authority: see the P. H. A., 1875, s. 246, *ante*, p. 540. The accounts of an urban authority other than the council of a borough are audited yearly under the P. H. A., 1875, s. 246, *ante*, p. 540. The accounts of rural district councils and of their committees and officers are under this and the next sub-section to be made up half-yearly to September 30th and March 31st in each year, and in such form as the Ministry of Health prescribe. As to accounts of parish meetings, see Circular and Order of March 20th, 1911.

(2) The said accounts shall, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.

The principal enactments here incorporated are those contained in the P. H. A., 1875, s. 247, *ante*, p. 541, and s. 250, *ante*, p. 550, as amended by the District Auditors Act, 1879 (in App. I., *post*, Vol. II.), s. 5 of which provides that the L. G. B. (now the M. of H.) may make the necessary regulations as to the audit of accounts. For the Acts relating to district auditors, viz., 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—9; 12 & 13 Vict. c. 103, ss. 9, 11; 29 & 30 Vict. c. 113, ss. 5—7; 42 Vict. c. 6, see App. I., *post*, Vol. II.

The joint committees referred to in the text are those which may be appointed under ss. 53, 57, *ante*, pp. 966, 971. The accounts of such a joint committee will be audited by the district auditors, even when one of the councils is that of a borough.

(3) The Local Government Board may, with respect to any audit to which this section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor.

This provision enables the L. G. B. to modify the enactments contained in the P. H. A., 1875, s. 247 (3), (4), (10), *ante*, pp. 542, 543. For Orders made by the Board, see App. II., *post*, Vol. II.

The power of modification under this section was extended by the Local Government (Emergency Provisions) Act, 1916, 6 & 7 Geo. 5, c. 12, s. 14, to the audit of all accounts of a local authority which were subject to audit by a district auditor; but that section was temporary only and is now spent.

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(5) Every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district.

No penalty is imposed for refusal to permit or hindering inspection; but inspection may in a proper case be enforced by *mandamus* (*R.* (or *Finch*) v. *Bishop of Ely* (1828), 8 B. & C. 112; 32 R. R. 350; *R.* v. *Great Faringdon* (1829), 8 L. J. (o.s.) M. C. 3; 9 B. & C. 541).

The L. G. B. expressed the opinion that in view of this section it is open to a parochial elector of a parish in a rural district at all reasonable times and without payment to inspect and take copies and extracts of the minute book of the rural

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district council; and it has been decided that the documents referred to in the sub-section are not merely those documents which would be brought before an auditor for the purposes of the audit, but include cases for the opinion of counsel with their accompanying documents and plans and opinions of counsel taken by the district council (*R.* v. *Godstone R. D. C.*, [1911] 2 K. B. 465; 75 J. P. 413). But where litigation is imminent between a parochial elector and a district council the court may in its discretion refuse to compel the council by *mandamus* to afford the parochial elector inspection of cases for the opinion and opinions of counsel relating to the subject-matter of the threatened litigation which would, if the parties were private persons, be privileged from inspection (*ibid.*, and *cf. R.* v. *Andover R. D. C.*, *infra*, and *Woodhouse & Co., Ltd.* v. *Woodhouse* (1914), Times, May 25th).

In an earlier case (*R.* v. *Bradford-on-Avon R. D. C.* (1908), 72 J. P. 348; 99 L T. 89), proceedings had been taken by T. against E. to have it declared that no public right of way existed over certain lands. A petition having been presented to the rural district council requesting them to take action in support of alleged public rights, the council submitted a case to counsel for his opinion. T., who was a parochial elector, then applied to the council for inspection of the petition, case and opinion. He was shown the petition, but not the two other documents. There was no litigation going on between T. and the council; but it was held that in the circumstances s. 58 (5) gave him no right to see the case and opinion. And it was held that although a member of a borough council has primâ facie a common law right to inspect the documents of the council, yet the court will not grant a *mandamus* to enable him to obtain such inspection where he is inspired by the indirect motive of assisting a person who is engaged in litigation with the council (*R.* v. *Hampstead Borough Council, Ex parte Woodward* (1917), 116 L. T. 213; 81 J. P. 65. See also the cases in notes to the Municipal Corporations Act, 1882, s. 233, in App. I., *post*, Vol. II.)

It has been said that when the clerk to a rural district council goes away, he should leave some person with authority to produce the minute-book to anyone entitled to see it (*R.* v. *Andover R. D. C.* (1913), 77 J. P. 296; 29 T. L. R. 419).

As to the inspection of rate books in the hands of overseers reference may be made to the Poor Rate Act, 1743, s. 2, and the Parochial Assessments Act, 1836, s. 5.

Supplemental provisions as to district councils.

59.—(1) Section one hundred and ninety-nine and Schedule I. of the Public Health Act, 1875, so far as that Schedule is unrepealed (which relate to the meetings of urban authorities, and to the meetings and proceedings of local boards), shall apply in the case of every urban district council other than a borough council and of every rural district council and board of guardians, as if such district council or board were a local board, except that the chairman of the council or board may be elected from outside the councillors or guardians.

See the P. H. A., 1875, s. 199, *ante*, p. 465, and Sched. I., Part 1, *ante*, p. 669.

The provision in the text applies those rules and also the enactment contained in s. 199 as to the meetings of urban authorities to all district councils, urban and rural (except the council of a borough).

A variation is made to r. 3 of Part 1 of the First Schedule above mentioned; under that rule a local board is to appoint at their annual meeting one *of their number* to be chairman for one year at all meetings at which he is present. The chairman of a district council or board of guardians may be elected from outside the councillors or guardians. This has already been enacted as regards boards of guardians and rural district councils (*ante*, pp. 926, 931, ss. 20 (7), 24 (4)); but the provision in the text extends to the chairmen of urban district councils (other than councils of boroughs).

(2) Any urban district council other than a borough council, and any rural district council and board of guardians may, if they think fit, appoint a vice-chairman to hold office during the term of office of the chairman, and the vice-chairman shall, in the absence or during the

inability of the chairman, have the powers and authority of the chairman. Section 59.

Under s. 20 (7), power has already been given to a board of guardians to elect a vice-chairman from outside their own body. Under the present clause it is competent for any of these bodies to appoint a vice-chairman, but *semble* (except in the case of guardians) he may not be appointed from outside. A vice-chairman so appointed will retire at the expiration of the chairman's year of office.

(3) Any rural district council shall be entitled to use for the purpose of their meetings and proceedings the board room and offices of any board of guardians for the union comprising their district at all reasonable hours, and if any question arises as to what hours are reasonable it may be determined by the Local Government Board.

The object of this provision was to enable the rural district council to meet at the board room of the guardians in the same manner as the rural sanitary authority of the union had previously done. See note (*a*) under s. 197 of the P. H. A., 1875, *ante*, at p. 463.

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(5) If any district council, other than a borough council, become unable to act, whether from failure to elect or otherwise, the county council of the county in which the district is situate may order elections to be held and may appoint persons to form the district council until the newly elected members come into office.

It does not appear that the power of the county council under this clause can be exercised by a joint committee of county councils where the district is situate in more than one county, as may in exceptional circumstances be the case (s. 36 (1), *ante*, p. 947). See also the Local Government (Elections) Act, 1896, *post*, p. 1002, now made permanent by 7 & 8 Geo. 5, c. 64, s. 35, *post*, p. 1099.

(6) Nothing in this Act shall affect any powers of the Secretary of State under the Public Health Supplemental Act for Aldershot, 1857, or the position of persons nominated under those powers.

Under the Public Health Supplemental Act for Aldershot, 1857, the Secretary of State for War has power to nominate from time to time three members of the local board of health in addition to the elected members of that body.

Miscellaneous.

60.—(1) The council of each county may, from time to time, by order, fix or alter the number of guardians or rural district councillors to be elected for each parish within their county, and for those purposes may exercise powers of adding parishes to each other and dividing parishes into wards, similar to those which by the Acts relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Local Government Board. Supplemental provisions as to guardians.

Previously the power to fix and alter the number of guardians had exclusively belonged to the L. G. B. under 4 & 5 Will. 4, c. 76, s. 38, and 7 & 8 Vict. c. 101, s. 18. The same body derived their power of adding parishes to each other from 31 & 32 Vict. c. 122, s. 6. That section provides that the Board (now the Ministry of Health) may by order add any parish in a union, the population of which, according to the last census, does not exceed 300, and the annual rateable value of which does

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not exceed the average rateable value of the parishes in the same union, according to the valuation lists in force for the time being, to some adjoining parish in the same union, for the purpose of the election of guardians. By 39 & 40 Vict. c. 61, s. 12, the Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward is, for the purpose of such election, to be deemed a separate parish except so far as the Board may otherwise order. These powers are by the text conferred on the county council or on the joint committee in the case mentioned in sub-s. (3).

(2) The council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, and in order that as nearly as may be one third of the persons elected as guardians for the union, and one third of the persons elected as rural district councillors for the district, shall retire in each year, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire.

Guardians and rural district councillors will retire by thirds unless an order is made for their simultaneous retirement under s. 20 (6), *ante*, p. 925. As each parish, ward, or group of united parishes will not have three guardians or councillors, but some may have more and others less than that number, it is necessary to provide for the years in which the guardians or councillors of each parish will retire. Thus, in a parish having only one guardian, the election of a guardian can take place only once in three years, though in a parish with three there may be one retirement every year. Power to rescind orders made under this section is given by 63 & 64 Vict. c. 16, *post*, p. 1009.

(3) Where a poor law union is situate in more than one county, the power under this section of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, shall be exercised by a joint committee of the councils of the counties concerned, but if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee.

Provided that if any order under this sub-section is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, it shall be of no effect until confirmed by the Local Government Board.

Although the area of a poor law union may be altered under s. 36 (6), *ante*, p 949, the general scheme of the Act is to leave the area of the union untouched even when it extends into two counties. But in that case it is necessary that the powers of fixing and altering the number of guardians and rural district councillors and of regulating the retirement of guardians and rural district councillors should be exercised by the county councils of both counties into which the union extends; hence the necessity of a joint committee to act for the entire union. The power of dividing a parish into wards is not given to the joint committee; that power apparently rests with the council of the county in which the parish is situate.

The number of members appointed by each county council to serve on the joint committee will apparently be fixed by agreement. Power to rescind orders made under this section is given by 63 & 64 Vict. c. 16, *post*, p. 1009

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The proviso gives in effect an appeal to the Ministry of Health, at the instance of any county council concerned, or any committee specially authorised by them to consider the orders made by the joint committee and to appeal therefrom if necessary. The proviso is applicable to rescinding orders made under 63 & 64 Vict. c. 16, *post*, p. 1009.

(4) Where under any local and personal Act guardians of a poor law union are elected for districts, whether called by that name or not, the provisions of this Act with respect to the election of guardians shall apply as if each of the districts were a parish.

In a few unions and parishes guardians or, as they are sometimes called, governors of the poor are elected under local Acts. Where the areas for which separate guardians are elected are not parishes, they are to be deemed parishes so that the county council will have the same powers for the purposes of the election of guardians for such areas as if they were parishes.

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Place of meeting of parish or district council or board of guardians.

61. No parish meeting or meeting of a parish council, or of a district council, or of a board of guardians shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

Permissive transfer to urban district council of powers of other authorities.

62.—(1) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

As to the adoptive Acts, see the note to s. 53 (1), *ante*, p. 966. The present provision refers to a case where such an Act has been adopted in an urban district or part thereof either before or after the appointed day. It has been held that it applies in a county borough (*Kirkdale Burial Board* v. *Liverpool Corporation*, [1904] 1 Ch. 829; 68 J. P. 289). The transfer is effected by a resolution of the council.

Where a district council takes over the powers, etc. of a special authority executing an adoptive Act, the expenditure of the council in administering the Act must be charged to the rate from which the expenses of the superseded authority were defrayed. Thus, it has been held that where an urban council takes over the powers and duties of a burial board the expenses incurred by the council in executing the Burial Acts, and the interest upon, and repayments of, money borrowed in pursuance of those Acts are chargeable on the poor rates of the parish or parishes for which the burial board was formed, and are not payable out of the general district rate (*R.* v. *Connah's Quay Overseers*, [1901] 2 K. B. 174; 65 J. P. 500). This decision supports the submission contained in a former edition "that upon such a transfer being effected the burden of the expenses incurred in the execution of the adoptive Act, and the benefit of the property and income applicable to or arising out of its execution will remain the burden and the benefit of the area under the adoptive Act, and will not be thrown upon or enjoyed by the parts of the urban districts which have not adopted the Act."

Reference may be made to 29 & 30 Vict. c. 90, s. 44, which is re-enacted by the P. H. A., 1875, Sched. V., *ante*, p. 700. That section gives power to burial boards in certain cases to transfer their powers to an urban authority.

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(2) *After the appointed day* any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

Provisions as to county council acquiring powers of district council.

63.—(1) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect :

(a) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board :

(b) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses :

(c) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers :

(d) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council :

(e) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers :

(f) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

This sub-section will apply where a county council resolves upon complaint by a parish council of the default of a district council that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council (s. 16 and s. 26 (4), *ante*, pp. 920, 938). It will also apply where a county council resolves to act in default of a rural district council under the Housing, Town Planning, etc., Act, 1909, s. 12, *post*, Vol. II., or acts instead of the district council under *ibid.*, s. 10 (3), (4), *post*, Vol. II. It will also apply to the transfer to a county council of the powers of a district council who have made default in enforcing the provisions of the Milk and Dairies Consolidation Act, 1915, 5 & 6 Geo. 5, c. 66, s. 13, *post*, Vol. II.

As to the manner in which the expenses of a rural council are to be defrayed, see s. 29, and notes, *ante*, p. 941. With regard to the expenses of the county council, these are, under the provision in the text, recoverable as a debt in the High Court or the County Court. Compare the provisions of the P. H. (London) A., 1891, ss. 100, 117 (*London County Council* v. *Bermondsey Borough Council*, [1915] 3 K. B. 305 ; 79 J. P. 449). It would seem that the provisoes to s. 29 will apply to the expenses to which the present sub-section relates. As to the borrowing powers of a rural council, see notes to s. 68 (4), *post*, p. 981.

Clause (f) enables the county council to hand over any property acquired for the purposes of the exercise of the powers of the district council by the county council, and to put the district council in the same position as regards powers, duties, debts, and liabilities relating to the subject-matter of the complaint, as if the powers of the district council had been exercised by that council in the first instance, and no complaint had been made.

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(2) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed, the members who are actually appointed shall act as the joint committee.

Where a complaint is so referred to a joint committee, it appears that such committee will have power to determine whether any action is to be taken in the matter of the complaint, and, if so, whether it shall be by taking over the powers of the defaulting council, or by appointing a person to perform the duty. See note to s. 16, *ante*, p. 921. The body to take action in either of these ways will be, it is submitted, the joint committee, and not the county council to whom the complaint was originally made.

64. A county council may employ a district council as their agents in the transaction of any administrative business on matters arising in, or affecting the interests of, its own district.

Power to act through district council.

This section may relate to most of the administrative business referred to by that description in the L. G. A., 1888, s. 3.

65. Where any improvement commission affected by this Act have any powers, duties, property, debts, or liabilities in respect of any harbour, the improvement commission shall continue to exist and be elected for the purpose thereof, and shall continue as a separate body, as if this Act had not passed, and the property, debts, and liabilities shall be apportioned between the district council for the district and the commission so continuing, and the adjustment arising out of the apportionment shall be determined in manner provided by this Act.

Saving for harbour powers.

This section met the case where the commissioners under an Improvement Act had powers, etc., in respect of a harbour. They continued to be elected and to have the same powers as to the harbour, and their property, debts, and liabilities were apportioned between the district council and the commissioners for harbour purposes.

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67. Where any powers and duties are transferred by this Act from one authority to another authority—

Transfer of property and debts and liabilities.

(1) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and

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(2) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and

(3) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

For instances see transfer of powers, etc., of authority under the adoptive Acts to urban district council (s. 62); transfer to rural district council of powers, etc., of rural sanitary authority and highway authority (s. 25); transfer to district councils of powers of justices out of sessions and of quarter sessions (ss. 27, 32).

The definition of "liabilities" in the L. G. A., 1888, s. 100 (incorporated with this Act by s. 75, *post*, p. 985), should be referred to. See also *Jackson* v. *Plympton St. Mary R. D. C.*, and other cases referred to in note to the L. G. A., 1888, s. 62 (1), *ante*, at p. 777 (*Nash* v. *Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57). With reference to sub-s. (3) of the text generally, see *R.* v. *Connah's Quay Overseers*, *ante* p. 977.

See as to the transfer, for the purposes of this Act, of stock standing in the name of an authority, the Local Government (Stock Transfer) Act, 1895, *post*, p. 1000.

Adjustment of property and liabilities.

68.—(1) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement.

In some cases an adjustment under this Act is specially provided for. See, for example, s. 54 (1) (c), *ante*, p. 969. When there is no such special provision, an adjustment may be necessary under this section. It is impossible to exhaust the cases in which such adjustment will be required, but there will, in general, be an adjustment in all cases where the area of a district is changed. And there will generally be some adjustment in respect of compensation to existing officers.

The words "any order" in this sub-section comprise an order under s. 36 (6), *ante*, p. 949, transferring part of a union to another union. In such case the adjustment should be between the two unions, not between the area transferred and the union from which it was taken (*In re Rochdale and Haslingden Unions* [1899] 1 Q. B. 540). As to the binding nature of an agreement when once entered into, see *Holsworthy U. D. C.* v. *Holsworthy R. D. C.* and *Att.-Gen.* v. *Essex C. C.* cited at p. 777, *ante*.

Numerous cases as to adjustments under this and similar sections will be found collected in the notes to the L. G. A., 1888, s. 62, *ante*, p. 776. Reference should be made to such notes, but many of the cases are now superseded by the recent Local Government (Adjustments) Act, 1913, *post*, p. 1082, which will apply to all future adjustments under this section and must be carefully studied.

(2) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annu-

payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board. Section 68.

Property belonging to the undivided area may be retained by or transferred to one of the divisions. If so, it must make some return, as by taking the sole burden or a greater share of some liability, or by the payment of some capital or annual sum. Debts and liabilities may be adjusted in like manner. The payment or remuneration of an officer may be a subject of adjustment if the officer remains in the service of more than one authority. And the compensation payable to an officer under s. 81 (7), *post*, p. 989, may have to be adjusted in like manner.

The proviso only applies where one of the authorities is a board of guardians, and the agreement relates to the joint use of property.

(3) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

The award will be by a single arbitrator appointed by agreement or by order of the court in case of difference. The terms of the submission, unless altered by agreement, will be those mentioned in the First Schedule to the Act of 1889 (see App. I., *post*, Vol. II.), with the additional power as to costs mentioned in the text. As to the position where an arbitrator omits to deal with the question of costs, see the cases in the note to the L. G. A., 1888, s. 62 (3), at p. 778, *ante*.

(4) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses (*a*) of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction (*b*).

(*a*) See the notes to s. 29, *ante*, p. 941.

(*b*) Urban and rural district councils may borrow in manner provided by the P. H. A., 1875, s. 233, *ante*, p. 521, and following sections. In the case of a rural council the security for the loan is the common fund out of which the general expenses of the council are payable, and in the case of special expenses the rates leviable for special expenses in the particular parish or parishes upon which the expenses are chargeable. No consent will be required for the loan, but the period of repayment will be fixed by the Ministry of Health.

(5) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied with

Section 68. the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

The effect of this provision is to prevent the application of the sums in question in aid of current rates. Such sums may be applied in repayment of debt or for any other purpose for which money might be borrowed.

Power to deal with matters arising out of alteration of boundaries.

69. Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing in this section shall empower a county council or joint committee to alter the boundaries of a county.

See the L. G. A., 1888, s. 59, *ante*, p. 773; and as to the power of a county council under this section, see *R.* v. *Middlesex JJ.*, *ante*, p. 773.

The alterations of the boundaries of a county can be effected only by means of a Provisional Order of the Ministry of Health, under the L. G. A., 1888, s. 54, *ante*, p. 768. A county council may apply to the Ministry for such an Order (s. 36 (5), *ante*, p. 949).

Summary proceeding for determination of questions as to transfer of powers.

70.—(1) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

This provision resembles the L. G. A., 1888, s. 29, *ante*, p. 759, under which many questions were decided. Rules under the section came into operation on October 1st, 1894, and April 6th, 1895. They provide that the summary proceeding for submitting any question under this section for the decision of the High Court shall be by special case to be agreed upon by the parties, or in default of such agreement to be settled by an arbitrator to be agreed on by the parties or appointed by a judge in chambers, or to be settled by a judge in chambers. The special case, when settled, is to be filed in the Crown Office within eight days, and to be put into the Crown Paper for argument. See the Yearly Practice, 1922, p. 551.

Under the corresponding section of the Act of 1888 it was held that the court would not answer abstract questions on the construction of the Act: see *Ex parte Cardigan C. C.* (1890), 54 J. P. 792.

(2) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section

may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891. Section 70.

Under the Charitable Trusts Act, 1860, s. 8, and 1869, ss. 10, 11, the Attorney-General or any person authorised by him or by the commissioners may present a petition to the Chancery Division of the High Court in a summary way appealing from certain orders of the commissioners. The conditions of appeal which are there prescribed, and which will apply to appeals under this section, are the following: (1) The petition must be presented within three months after the definitive publication of the order; and "definitive publication" has been held to mean "the final publication when the time expired for the receipt of suggestions and objections" (*Re Hackney Charities* (1864), 12 W. R. 1131). (2) Twenty-one days' written notice of the intention to appeal must be given to the Charity Commissioners, and to the Attorney-General. (3) The court may deal with the costs, and may require security for costs to be given by an appellant other than the Attorney-General.

A question having arisen as to whether the income of a local charity was or was not exclusively applicable for church purposes, a letter was sent to the Charity Commissioners by the chairman of the parish council setting forth his contention on the subject. The commissioners, after receiving a report, wrote a letter expressing their opinion. It was held that this letter constituted a determination under this sub-section, which was conclusive, not having been appealed against within three months (*Att.-Gen.* v. *Hughes* (1899), 81 L. T. 679; 48 W. R. 150).

As to the liability of the Charity Commissioners for costs, see *In re Perry Almshouses*, [1898] 1 Ch. 391, at p. 402.

(3) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

Under the corresponding provision in the L. G. A., 1888, s. 29, there is no appeal to the Court of Appeal (*Ex parte Kent C. C.*, [1891] 1 Q. B. 725; 55 J. P. 647). The text gives such an appeal, but only with leave; if the High Court refuses leave the Court of Appeal may grant it (*Godman* v. *Moses* (1900), 69 L. J. Q. B. 823; 83 L. T. 46).

71. A copy of every order made by a county council or joint committee in pursuance of this Act shall be sent to the Local Government Board, and, if it alters any local area or name, also to the Board of Agriculture. Supplemental provisions as to county council orders.

As to orders by a joint committee of county councils, see s. 36 (1), (11), *ante*, pp. 947, 950; and as to orders altering local names, see s. 55, *ante*, p. 970.

By the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921, the Secretary of State is substituted for the L. G. B. as regards orders relating to elections.

For "Board of Agriculture" now read "Minister of Agriculture" (9 & 10 Geo. 5, c. 91).

72.—(1) The expenses incurred by the Local Government Board in respect of inquiries or other proceedings under this Act shall be paid by such authorities and persons and out of such funds and rates as the Board may by Order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by any authority or person shall be a debt from that authority or person to the Crown. Provisions as to local inquiries.

Compare the provisions of the P. H. A., 1875, s. 294, *ante*, p. 627. The provision as to the costs being a debt due to the Crown was new. It renders the costs

Note to Section 72.

recoverable by the prerogative writ of extent, and other special remedies, in priority to all other debts.

(2) Such expenses may include the salary of any inspector or officer of the Board engaged in the inquiry or proceeding, not exceeding three guineas a day.

(3) The Local Government Board and their inspectors shall have for the purposes of an inquiry in pursuance of this Act the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875.

See the P. H. A., 1875, s. 296, *ante*, p. 629, and the notes thereto.

(4) Where a county council hold a local inquiry under this Act or under the Local Government Act, 1888, on the application of the council of a parish or district, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) shall be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting; but, save as aforesaid, the expenses of the county council incurred in the case of inquiries under this Act shall be paid out of the county fund.

Sub-section (1) applies to all inquiries by the Ministry of Health under this Act. This sub-section applies only to local inquiries held by a county council on the application of a parish or district council or inhabitants.

The expenses recoverable by a county council are limited to out-of-pocket expenses, and do not include any remuneration paid to a commissioner appointed by the council to hold an inquiry (*Middlesex C. C.* v. *Kingsbury U. D. C.*, [1909] 1 K. B. 554; 73 J. P. 153). Expenses not so recoverable will fall on the county fund.

See also as to the costs of inquiries by a county council with reference to the compulsory acquisition of land, s. 9 (12), and notes, *ante*, p. 914.

Provision as to Sundays and bank holidays.

73. When the day on which anything is required by or in pursuance of this Act to be done is Sunday, Christmas Day, or Good Friday, or a bank holiday, that thing shall be done on the next following day, not being one of the days above mentioned.

It will be noticed that this provision is not permissive merely.

Provisions as to Scilly Islands.

74. This Act shall be deemed to be an Act touching local government within the meaning of section forty-nine of the Local Government Act, 1888, and a Provisional Order for the Scilly Islands may, on the application of the council of the Isles of Scilly, and after such public notice as appears to the Local Government Board sufficient for giving information to all persons interested, be made accordingly.

By s. 49 (1) of the Act of 1888 "It shall be lawful for the Local Government Board to make a Provisional Order for regulating the application of this Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils and also of authorities under the Acts relating to highways and the P. H. A., 1875, and the Acts amending the same and for the application to the islands of any provisions of any Act touching local government, and any such Order may provide for the establishment of councils

and other local authorities separate from those in the county of Cornwall, and for the contribution by the Scilly Islands to the county council of Cornwall in respect of costs incurred by the county council for matters specified in the said Order as benefiting the Scilly Islands, and such Order may also provide for all matters which appear to the Local Government Board necessary or proper for carrying the Order into full effect." A Provisional Order establishing a separate council for the Scilly Islands, and conferring thereon the powers of a county council and of a highway and sanitary authority, was made under this section, and confirmed by 53 & 54 Vict. c. clxxvi.

Note to Section 74.

75.—(1) The definition of "parish" in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

Construction of Act.

By the section referred to "'parish' means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part." The application of this definition being expressly excluded, the definition of "parish" in the Interpretation Act, 1889, applies, whereby (s. 5) "parish" is defined to mean, "as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed." The part of the definition in the Act of 1888 which relates to parts of parishes would obviously be inapplicable to the present Act, having regard to its provisions as to parishes situate partly within and partly without a larger area.

For expressions which are defined by the Act of 1888, and have the same meaning when used in this Act, see the Act of 1888, s. 100, *ante*, p. 783. Such expressions bear the meaning given to them by the earlier Act, "unless the context otherwise requires." It may be mentioned that the definition of "county" in the Act of 1888 is varied (*infra*, sub-s. (2)) so as to include a "county borough," and that the definitions of "district council" and "county district" (which had reference to future legislation which might establish district councils) must now be read as referring to the district councils established by this Act, and to the districts of such councils. See s. 21, *ante*, p. 926.

(2) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

As to "parochial electors," see the Representation of the People Act, 1918, Sched. 6, r. 2, *post*. The effect of that Act is to substitute local government electors for parochial electors.

The expression "election" includes both the nomination and the poll.

The election rules framed by the L. G. B. under s. 23 (6), s. 20 (5), and s. 3 (5), accordingly regulate the proceedings preliminary to the actual poll, including the nomination; the definition is not intended to be exhaustive, the word "includes" and not "means" being used (*R.* v. *Kershaw* (1856), 6 El. & Bl. 999; 20 J. P. 741).

Election rules will in future be made by the Secretary of State under the Order of 1921 referred to in the note to s. 20 (5), *ante*, p. 925

Section 75.

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

This definition has especial reference to s. 14, *ante*, p. 918. Persons acting as trustees, though not trustees in the strict legal sense, are included in the term.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes:

(a) For any spiritual purpose which is a legal purpose; or

(b) For the benefit of any spiritual person or ecclesiastical officer as such; or

(c) For use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise, by any particular church or denomination; or

(d) For the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or

(e) Otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

The words "as such" in clause (e) show that no charity is an ecclesiastical charity within that clause unless, upon the true construction of the instrument of endowment, its benefits are exclusively confined to members of a particular church or denomination. Ecclesiastical charities within the meaning of this definition are not confined to charities for the spiritual or religious benefit of a church, but include eleemosynary charities (*Re Ross's Charity, Re Perry Almshouses*, [1899] 1 Ch. 21; 63 J. P. 52). See also *In re Spendluffe's Charity* (1900), 65 J. P. 72; 83 L. T. 498.

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

Cf. as to this phrase, *St. George's, Hanover Square* v. *Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153 (a closed burial ground).

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

Section 75.

The expression " vestry " in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

See *R.* v. *Shipley Parish Council*, *ante*, p. 264.

The expression " rateable value " means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression " county " includes a county borough, and the expression " county council " includes the council of a county borough.

The expression " elementary school " means an elementary school within the meaning of the Elementary Education Act, 1870.

The Elementary Education Act, 1870, has been repealed and enacted by the Education Act, 1921, ss. 27, 172.

The expression " local and personal Act " includes a Provisional Order confirmed by an Act and the Act confirming the Order.

As to what is a local and personal Act, reference may be made to *R.* v. *London C. C.*, [1893] 2 Q. B. 454 ; 58 J. P. 21.

The expression " prescribed " means prescribed by order of the Local Government Board.

Now Minister of Health (9 & 10 Geo. 5, c. 21).

Extent of Act.

76. This Act shall not extend to Scotland or Ireland.

Short title.

77. This Act may be cited as the Local Government Act, 1894.

PART V.

TRANSITORY PROVISIONS.

* * * * * *

Power of county council to remove difficulties.

80.—(1) If any difficulty arises with respect to the holding of the first parish meeting of a rural parish, or to the first election of parish or district councillors, or of guardians, *or of members of the local board of Woolwich, or any vestry in the county of London, or of auditors in the county of London*, or to the first meeting of a parish or district council, or board of guardians, *or such local board or vestry as aforesaid*, or if, from no election being held or an election being defective or otherwise, the first parish or district council, or board of guardians, *or local board or vestry* has not been properly constituted, *or there are no auditors under the Metropolis Management Acts*, 1855 *to* 1890, or an insufficient number, properly elected, the county council may by order make any appointment or do any thing which appears to them necessary or expedient for the proper holding of any such first meeting or election and properly constituting the parish or district council, board of guardians, *local board, or vestry, or auditors*, and may, if it appears to them necessary, direct the holding of a meeting or election, and fix the dates for any such meeting or election, but a parish shall, notwithstanding any such failure to constitute the parish council, be deemed to be a parish having a parish council within the meaning of

Section 80.

this Act. Any such order may modify the provisions of this Act, and the enactments applied by or rules framed under this Act so far as may appear to the county council necessary or expedient for carrying the order into effect.

This sub-section is spent, but is practically re-enacted by the Local Government (Elections) Act, 1896, *post*, p. 1002, now made permanent by the Representation of the People Act, 1918, s. 35, *post*. See *R.* v. *Miles*, cited in the notes to s. 48 (5), *ante*, p. 964, as to the powers of the county council under that sub-section and this sub-section.

Italicised words in sub-s. (1) and sub-s. (2) (which is spent) were repealed by the S. L. R. A., 1908.

. . . . . .

Existing officers.

81.—(1) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointed a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body.

As an illustration of this sub-section, the officers of highway boards became officers of the rural district council when the latter became the highway authority under s. 25. In a highway parish the body appointing a surveyor were the inhabitants in vestry, or meeting in the nature of a vestry (5 & 6 Will. 4, c. 50, ss. 6, 18).

This sub-section did not prevent a council distributing the work as it liked amongst all its various officers, whether appointed by or transferred to it (*Genn* v. *East Kerrier R. D. C.* (1898), 62 J. P. 215).

. . . . . .

Sub-sections (2) and (3) relate to vestry clerks and assistant overseers.

(4) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

Compare the corresponding provision in the L. G. A., 1888, s. 119.

The expression "salary or remuneration" apparently means "remuneration whether by salary or by fees." See *Wyatt* v. *London C. C.* (1901), 66 J. P. 325; 85 L. T. 629.

As to the position of an officer who is required to perform duties which are not analogous, or are an unreasonable addition, to his existing duties, see *Gray* v. *Hackney Borough Council* (1904), 2 L. G. R. 429.

The right of an officer to receive not less salary, etc., is subject to the right of the new employers to determine the original contract of service. See *Rowsell* v. *Metropolitan Water Board* (1915), 84 L. J. K. B. 1869; 79 J. P. 267. Where a usage is an implied term of all contracts entered into with employees in a particular trade, then after notice by an employer to discontinue the usage, every person employed by him who on promotion undertakes fresh duties at a different salary, must be taken to have been offered and accepted a fresh contract of service of which the usage is not an implied term (*Meek* v. *Port of London Authority*, [1918] 2 Ch. 96; 82 J. P. 225. And see *Jones* v. *Lewis*, cited in the note to s. 33 (4), *ante*, p. 945).

By an order of the year 1900 certain parishes of some of which the applicant was assistant overseer, were amalgamated, and the order provided that he was to hold office on the same terms as to remuneration as before, as far as possible. The

applicant's salary had previously been fixed at 5 per cent. commission. In accordance with the order the collection of the poor rate in a portion of the amalgamated parish was allotted to the applicant, and he was given a fixed salary based on a three years average of the commission which he had previously earned. In 1914 the applicant applied for a mandamus to the overseers to pay him on the original basis. It was held that on the facts the applicant's terms of remuneration were as nearly as possible the same as before, and that in any case the writ being discretionary ought not in the circumstances to issue after so great a lapse of time (*R.* v. *Hertford Overseers* (1914), 111 L. T. 716; 78 J. P. 405). **Note to Section 81**

(5) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided shall hold his office as such officer for each parish or district formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed *as from the appointed day.*

(7) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the officers affected.

For earlier provisions (now largely superseded) as to compensation for loss of office, see the P. H. A., 1875, s. 309, p. 650, *ante.*

In 1897 the plaintiff was verbally appointed by the chief engineer of the New River Company to act as draughtsman and surveyor in relation to certain waterworks which that company were carrying out in pursuance of parliamentary powers. He was subsequently employed by the company to perform other works, and continued to act for the defendant Board after its formation pursuant to an Act of 1902. In December, 1909, his services were dispensed with. It was held that he was entitled to a superannuation allowance as an existing officer (*Webster* v. *Metropolitan Water Board* (1912), 76 J. P. 474; 10 L. G. R. 1025).

Compensation to existing officers: incorporated provisions of L. G. A., 1888, s. 120.

Section 120 of the L. G. A., 1888 (which has also been incorporated, with or without modifications, in the London Government Act, 1899, the Metropolis Water Act, 1902, the Education Act, 1902, the Port of London Act, 1908, the Milk and Dairies Act, 1915, s. 16, the Scotch and Irish Local Government Acts, and numerous local Acts and Orders of the L. G. B.), provides as follows:—

"(1) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are

Note to Section 81.

transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to her Majesty's Civil Service, is paid to a person on abolition of office.

"(2) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

"(3) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

"(4) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

"(5) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

"(6) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

"(7) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

"(8) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes."

It will be observed that, under the section above set out, in fixing the amount of compensation, regard must be had to the following considerations:

1. The direct pecuniary loss which the officer suffers.
2. The conditions of his appointment, *e.g.*, whether it is for life or for a fixed term, or at pleasure. On this subject reference may be made to *R.* v. *Norwich*

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(*Mayor, etc. of*) (1838), 8 A. & E. 633, as showing that, although an office may be held during pleasure, the authority assessing compensation is not bound to consider only the legal tenure, but may, under certain circumstances, award compensation as for an office held for life. *Cf.* also *R.* v. *Poor Law Board* (1871), L. R. 6 Q. B. 785. See also the cases cited in the note to s. 81 (4), *ante*, p. 988.

3. The nature of his office, *i.e.*, whether it is an important or subordinate one.
4. The duration of his service.
5. Any additional emoluments which he acquires under the Act which alters his position by the abolition of his office or diminution of his salary.
6. Any emoluments which he might have acquired if he had not refused to accept a new office.
7. All the other circumstances of the case.

It has been suggested that sub-s. (7) applies only to the case where an officer is appointed to an office under an authority of the same kind as that in which he was formerly employed: in other words, that the words "the same or any other county council" must if necessary be read as applying to a district council, etc.

It should be noticed that not only is the decision of the Treasury final, but the appeal to the Treasury is the only means by which a claim for compensation can be enforced. An action does not lie to recover compensation (*Rowsell* v. *Metropolitan Water Board*, *ante*, p. 988. And see also *Yorke* v. *R.*, [1915] 1 K. B. 852; 84 L. J. K. B. 947).

Where a council acting under statutory power to "abolish" an office (compensation being provided for) dismiss an officer contrary to the terms of his engagement he cannot maintain an action for wrongful dismissal, but is relegated to his right to compensation (*Clarke* v. *Lewisham Borough Council* (1903), 67 J. P. 195; 19 T. L. R. 62).

A private Act which authorised the defendants to construct a bridge over the Arun and to acquire the ferry rights from certain trustees, stipulated that they should pay compensation to any servants in the regular employment of the trustees who should not be retained in the same or similar employment, and at the salary and on the terms and conditions in, at, and on which they were employed by the trustees at the date of the execution of the contract for the construction of the bridge in respect of any loss of office or diminution of salary by reason of the transfer of the undertaking by the trustees to the defendants. The plaintiffs, who had been in the employment of the trustees as ferrymen, were on the transfer of the ferry undertaking continued by the defendants in the same employment and at the same salary for two years until the completion of the bridge, when they were dismissed by the defendants without notice. It was held that the plaintiffs were entitled to the same notice as the trustees would have been bound to give them or to wages in lieu of notice, but that they were not entitled to compensation under the Act (*Latter* v. *Littlehampton U. D. C.* (1909), 73 J. P. 426; 101 L. T. 172). See also *R.* v. *London C. C., Ex parte Scriven* (1907), 23 T. L. R. 493; *R.* v. *Westport U. D. C.*, [1903] 2 I. R. 179, and *R.* v. *London C. C., Ex parte Norris*, *infra*, as to when a loss of office can be said to be a consequence of an Act; and *Webster* v. *Metropolitan Water Board*, *ante*, p. 989, as to an employment alleged to be only temporary.

As to when a person whose services are dispensed with, his duties for the future being performed not by a successor with the same rank, but by an inferior official, can say that his office has been "abolished," reference may be made to *Williams* v. *Greville*, [1909] A. C. 353.

"Officer."

An officer means a person holding "any place, situation, or employment," and "existing" means existing at the appointed day (see L. G. A., 1888, s. 100, *ante*, p. 784, and s. 75 (1) of this Act, *ante*, p. 985). It was held in *Legg* v. *Stoke Newington Vestry* (1895), 59 J. P. 696, that a sanitary inspector, clerk to a sanitary committee, messenger, hall porter, and office boy were "officers" within the compensation clause of a local Act, and not merely "servants." As to solicitors appointed permanently to advise an authority being "officers," see *R.* v. *Poor Law Board*, *supra*, *R.* v. *Local Government Board* (1874), L. R. 9 Q. B. 148; 38 J. P. 165. In *In re Carpenter and the Bristol Corporation*, [1907] 2 K. B. 617; 71 J. P. 417, a solicitor acted for many years for the guardians of a union and for a district council. He was never formally appointed solicitor to either body, but was specially retained on every occasion when the services of a solicitor were required and was paid costs and charges upon the

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usual scale for the work actually done by him. By a local Act, which abolished the union and dissolved the district council, it was provided that any officer who suffered direct pecuniary loss by virtue of the Act should be deemed to be an officer entitled to compensation within the meaning of s. 120 of the L. G. A., 1888. It was held (following *R.* v. *Armagh U. D. C.*, [1901] 2 I. R. 28) that the solicitor was not an "officer" within the definition contained in s. 100 of the L. G. A., 1888, and was therefore not entitled to compensation under s. 120. A public vaccinator has been held not to be an officer or servant of the guardians (*Lawson* v. *Marlborough Union*, [1912] 2 Ch. 154; 76 J. P. 305). A "warrant officer" of a council, *i.e.*, a bailiff whom they always employed to levy distresses on their behalf, was held not to be "designated" as an officer within the meaning of a local Act (*Newton* v. *Marylebone Borough Council* (1914), 84 L. J. K. B. 1721; 79 J. P. 410).

By the Education Act, 1902, the powers and duties of school boards were transferred to county councils. Previous to the passing of the Act the applicant, a rate collector in the employ of the corporation of the city of London, was employed to collect the education rate levied by the school board. After the passing of the Act the education rate was collected by the guardians as part of the poor rate, and the applicant suffered a pecuniary loss from the loss of fees for collecting the education rate. It was held that the applicant, not being an officer in the employment of the school board, was not entitled to compensation under s. 120 of the L. G. A., 1888, and Sched. II., r. 21, of the Education Act, 1902 (*R.* v. *London C. C., Ex parte Norris*, [1906] 1 K. B. 346; 70 J. P. 160).

Scale of compensation.

In no case is the compensation to exceed he amount which under the Acts and Rules relating to civil servants is paid to a person on abolition of office. Those Acts are the Superannuation Acts, 1859, 1884, and 1909. Until the passing of the Act of 1909 it was the "practice" of the Treasury—there were no "Rules"—to grant as compensation in cases of abolition of office an allowance of one-sixtieth of the annual salary and emoluments for every year of service, *plus* an additional allowance of

For 20 years of service and upwards	–	–	10/60ths additional.
„ 15 „ but under 20	–	–	7/60ths „
„ 10 „ „ 15	–	–	5/60ths „
„ 5 „ „ 10	–	–	3/60ths „
Under 5 years – – – – –	–	–	1/60th „

In no case, however, was the allowance to exceed two-thirds of the annual salary and emoluments, and it was also the "practice" to make a deduction of one-fourth of the amount when an officer had not been required to devote his whole time to the duties of his office. The Act of 1884, s. 3, authorised a special additional allowance in respect of an office requiring a professional or other peculiar qualification, but this section and s. 3 of the Act of 1859 was repealed by the Act of 1909 subject to a saving of the rights of persons who before the passing of that Act had been appointed to an office to which an order, warrant, or minute of the Treasury issued under the earlier Acts applied.

The Act of 1909, which applies (generally speaking) only to civil servants appointed after its date, altered the basis of calculation in their case from one-sixtieth to one-eightieth, but gave in return certain benefits by way of a lump sum payment and otherwise; it also abolished in their case the system of "added years." In the Neath Order, 1921, as issued by the Ministry of Health, s. 120 (1) was incorporated without qualification. Before the House of Commons Committee, however, it was represented on behalf of the officers affected that in view of the altered Treasury practice the following provision was necessary: "Provided that for the purposes of this Article the expression 'the Acts and Rules relating to Her Majesty's Civil Service'" in sub-s. (1) of s. 120 shall mean the Acts and Rules relating to Her Majesty's Civil Service which were in operation at the date of the passing of the Act of 1888. It was stated that the amendment had been adopted in various Acts such as the Representation of the People Act, 1918, the Education Act, 1918, the Ministry of Transport Act, 1919, and in various local Bills and Orders. The amendment was accepted; but it cannot at the moment be definitely stated that it will be inserted as a matter of course in all orders issued by the Ministry.

An authority in fixing the amount of compensation must not blindly follow the

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Treasury " practice," but must in each case exercise its own discretion (*R.* v. *Stepney Borough Council*, [1902] 1 K. B. 317 ; 66 J. P. 183).

A claimant for compensation must deliver his claim to the particular body to whom the powers of the authority whose officer he was are transferred, and his claim must state the matters and be accompanied by the statutory declaration mentioned in sub-s. (2) of the section above set out ; he may be required to attend before the body in question and be examined on oath as to his claim if a justice is present to administer an oath ; if dissatisfied with the decision of that body, he may appeal to the Commissioners of the Treasury.

It would seem that, although in sending in his claim an officer is required (s. 120 (2)) to give particulars of his salary and emoluments for five years, the maximum compensation is to be governed by his ultimate salary and emoluments, and not by an average of the five years (*Livingstone* v. *Westminster Corporation*, [1904] 2 K. B. 109 ; 68 J. P. 276). It is the province of the local authority, subject to an appeal to the Treasury, to determine what the salary and emoluments amounted to, and when the authority have so determined, the court cannot interfere (*ibid.*). Where an authority have once passed a resolution fixing the amount of compensation to be paid to an officer, a specialty debt is in existence, and they cannot rescind their resolution (*ibid.*).

"Emoluments."

As to what are " emoluments," see *R.* v. *Postmaster-General* (1878), 3 Q. B. D. 428 (travelling allowances) ; *Livingstone* v. *Westminster Corporation*, *supra* (allowance for the keep of a horse) ; *R.* v. *Poor Law Board* (1871), L. R. 6 Q. B. 785 ; and *R.* v. *Local Government Board* (1874), L. R. 9 Q. B. 148 ; 38 J. P. 165 (solicitors acting as clerks or legal advisers to authorities) ; *Lawson* v. *Marlborough Union*, [1912] 2 Ch. 154 ; 76 J. P. 305 (district medical officer and public vaccinator) ; *R.* v. *Lyon*, *Ex parte Harrison*, [1921] 1 K. B. 203 ; 85 J. P. 78 (special duty grants to officers).

The proviso to the sub-section in the text varies the provision above set out of the Act of 1888 as to the fund out of which payment of compensation is to be made ; such payments are to be paid in the case of district councils as general expenses (as to which see note to s. 29, *ante*, p. 941).

As to whether a pension or gratuity is attachable, see *Timothy* v. *Day*, [1908] 2 I. R. 26, 386.

Provision as to highways.

82.—(1) Where before the appointed day the highway expenses were charged on a particular parish or other area and not on a district, the district council may determine that the highways in that parish or area shall be placed in proper repair before the expenses of repairing the same become a charge upon the district, and, failing such highways being placed in proper repair to the satisfaction of the district council, the district council may themselves place the highways in proper repair, and the expense incurred by them of placing those highways in proper repair shall be a separate charge on the parish or area, and any question which arises as to whether any such expenses are properly a separate charge on the parish or area shall be determined by the county council.

This provision enabled a district council to require that the highways, which before the appointed day were repairable at the expense of a parish or other area not co-extensive with the district, should be placed in proper repair at the expense of such parish or area before being taken over by the district council as highway authority, under s. 25, *ante*, p. 933. As to the meaning of the expression " appointed day " where the operation of s. 25 as to highways was postponed, see the proviso to s. 84 (4), *post*, p. 994.

(2) Where in pursuance of an order of a county council a parish continues to maintain its own highways after the appointed day, the highway expenses shall not be deemed to be expenses of the parish council or of the parish meeting within the meaning of this Act.

Note to Section 82. So long as a highway parish remained such (by virtue of an order postponing the operation of s. 25) the highway rate continued to be assessed and levied by the surveyor of highways as before the passing of the Act.

Duty of county council to bring Act into operation.

83. It shall be the duty of every county council to exercise all such of their powers as may be requisite for bringing this Act into full operation within their county as soon as may be after the passing thereof, and a county council may delegate their powers under this Act to a committee.

See further as to the duty of county councils to use their powers under this Act with expedition, s. 36 (13) (*ante*, p. 950), and s. 80 (*ante*, p. 987).

84. . . .

Sub-sections (1) and (2), as to the first elections under the Act, were repealed as spent by the S. L. R. A., 1908.

. . . . . .

"Appointed day."

(4) Subject as in this Act mentioned, "the appointed day" shall,

(a) for the purpose of elections and of parish meetings in parishes not having a parish council, be the day or respective days fixed for the first elections under this Act, or such prior day as may be necessary for the purpose of giving notices or doing other acts preliminary to such elections; and

(b) for the purpose of the powers, duties, and liabilities of councils or other bodies elected under this Act, or other matters not specifically mentioned, be the day on which the members of such councils or other bodies first elected under this Act come into office; and

(c) for the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act;

and the lists and registers of parochial electors shall be made out in such parts as may be necessary for the purpose of the first elections under this Act.

Provided that where an order of a county council postpones the operation of the section with respect to highways as respects their county or any part thereof the day on which such postponement ceases shall, as respects such county or part, be the appointed day, and the order of postponement shall make such provision as may be necessary for holding elections of highway boards during the interval before the appointed day.

The effect of the proviso was to postpone the "appointed day" as regards highway powers where those powers were temporarily withheld from a district council by an order for postponement, under s. 25, *ante*, p. 933.

Current rates.

85.—(1) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties

recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day ; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day. Section 85.

(3) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

(4) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

(5) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

As to the change of name of urban sanitary authorities, see s. 21 (1), *ante*, p. 926, and s. 55, *ante*, p. 970.

This and the next three sections were applied, with modifications, in the Education Act, 1902. See Sched. II. (8) of that Act.

86.—(1) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act : and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require. Saving for existing securities and discharge of debts.

(2) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

87. All such byelaws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly. Saving for existing byelaws.

Section 88. Saving for pending contracts, etc.

88.—(1) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

(2) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

Repeal.

89. *The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that Schedule mentioned, and* so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act.

This Act does not give power to a county council to create wards or fix the number of councillors in an urban district, but see the L. G. A., 1888, s. 57, p 770, *ante*. The meaning of the proviso seems to be that where these matters are provided for by or in pursuance of a local and personal Act the county council shall have the same power of altering them from time to time as that body has in the case of rural districts. See s. 60 (1), *ante*, p. 975.

SCHEDULES.

FIRST SCHEDULE.

RULES AS TO PARISH MEETINGS, PARISH COUNCILS, AND COMMITTEES.

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PART THREE.

General.

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(2) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed the same or the next ensuing meeting by a person describing himself as appearing to be chairman of the meeting at which the minute is signed shall be received in evidence without further proof.

In order to make a minute evidence it must be signed at the meeting to which it relates, or at the next meeting of the same body. The date on which it is signed

should appear upon the minute. As to the appointment of committees, see ss. 56, 57, *ante*, pp. 970, 971. **Schedule 1.**

(3) Until the contrary is proved every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

It will, of course, be competent for any party seeking to upset the proceedings of the meeting to tender evidence to show that the meeting was not duly convened, or that any of the members were not duly qualified, or that the committee was not duly constituted, or was acting *ultra vires*.

* * * * * *

PART FOUR.

Proceedings of Committees of Parish or District Councils. Section 56.

(1) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

It appears from Part 3, rules (2) and (3) above, that every committee must keep minutes of their proceedings.

(2) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

A committee have, of course, no power to fix their area of authority or in any way to alter the powers which have been delegated to them.

SECOND SCHEDULE.

ENACTMENTS REPEALED. Section 89.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
54 *Geo.* 3, c. 91 . .	*An Act to amend so much of an Act passed in the forty-third year of Her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.*	*The whole Act, so far as it relates to rural parishes.*
58 *Geo.* 3, c. 69 . .	*The Vestries Act*, 1818 .	*Sections one, two, three, and four, so far as they relate to parish meetings and parish councils under this Act.*
59 *Geo.* 3, c. 85 . .	*The Vestries Act*, 1819 .	*The whole Act, so far as it relates to parish meetings under this Act.*

Schedule 2.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
1 & 2 *Will.* 4, c. 60 .	*The Vestries Act*, 1831 .	*The whole Act, so far as it relates to parish meetings under this Act, except section thirty-nine.*
4 & 5 *Will.* 4, c. 76 .	*The Poor Law Amendment Act*, 1834.	*In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner herein-after mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively"; and from "and also fix a qualification" to "for the ensuing year shall be chosen"; and from "and every justice of the peace" to "as such elected guardians"; and from "Provided also" to the end of the section.* *Section thirty-nine, from "and every justice" to the end of the section.* *In section forty, the words "In all cases of the election of guardians under this Act or."* *Section forty-one.* *Section forty-eight from "Provided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.*
5 & 6 *Will.* 4, c. 50 .	*The Highway Act*, 1835 .	*In section forty-eight, the words "with the consent in writing of the justices of the peace at a special sessions for the highways" and the words "at and for such price as the said justices may deem fair and reasonable."*
7 *Will.* 4 & 1 *Vict.* c. 45	*The Parish Notices Act*, 1837.	*Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.*
5 & 6 *Vict.* c. 57 .	*The Poor Law Amendment Act*, 1842.	*Section eight, section eleven, from "and in every case," to the end of the section, and section fifteen.*
7 & 8 *Vict* c. 101 .	*The Poor Law Amendment Act*, 1844.	*Sections seventeen, twenty, and twenty-four, and section sixty-one from "and wherever any such collector" to "provisions of this Act."*
13 & 14 *Vict.* c. 57 .	*The Vestries Act*, 1850 .	*Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.*
14 & 15 *Vict.* c. 105 .	*The Poor Law Amendment Act*, 1851.	*Section two and section three.*
16 & 17 *Vict.* c. 65 .	*The Vestries Act*, 1853 .	*The whole Act, so far as it relates to parish meetings under this Act.*
18 & 19 *Vict.* c. 120 .	*The Metropolis Management Act*, 1855.	*Section six.* *Sections thirteen to twenty-seven.* *In section thirty the words "o... custom."* *Section fifty-four.* *In section two hundred and thirty-five the words "under this Act," where they secondly occur.*

Schedule 2.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
19 & 20 *Vict.* c. 112 .	*The Metropolis Management Amendment Act*, 1856.	*Sections six, seven, and eight.*
23 & 24 *Vict.* c. 30 .	*The Public Improvements Act*, 1860.	*In section four the words "in value."*
25 & 26 *Vict.* c. 102 .	*The Metropolis Management Amendment Act*, 1862.	*Section thirty-six; and section forty from "by rating" to "of such parish."*
25 & 26 *Vict.* c. 103 .	*The Union Assessment Act*, 1862.	*In section two, the words "consisting partly of ex-officio and partly of elected guardians," and from "Provided always" to the end of the section.* *In section five, the words "ex-officio or elected," in both places where they occur, and the words "as the case may be."*
30 & 31 *Vict.* c. 6 .	*The Metropolitan Poor Act*, 1867.	*Section seventy-nine.*
30 & 31 *Vict.* c. 106 .	*The Poor Law Amendment Act*, 1867.	*Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.*
31 & 32 *Vict.* c. 122 .	*The Poor Law Amendment Act*, 1868.	*Section four, from "and the powers" to the end of the section.*
38 & 39 *Vict.* c. 55 .	*The Public Health Act*, 1875.	*Section eight from "and the number" to the end of the section. In section nine, from "Provided that (1) An ex-officio guardian" to "situated in an urban district" (being the provisoes); and the words "from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for a union," and from "Subject to the provisions of this Act" to the end of the section.* *Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve.* *So much of Schedule I. as relates to committees, and Schedule II.*
39 & 40 *Vict.* c. 61 .	*The Divided Parishes and Poor Law Amendment Act*, 1876.	*Section six, from "The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to "no alteration," except as to cases where a parish is dealt with by order of the Local Government Board.*
39 & 40 *Vict.* c. 79 .	*The Elementary Education Act*, 1876.	*In section seven the words "so however that in the case of a committee appointed by guardians one third at least shall consist of ex-officio guardians, if there are any, and sufficient ex-officio guardians."*
47 & 48 *Vict.* c. 70 .	*The Municipal Elections (Corrupt and Illegal Practices) Act*, 1884.	*Section thirty-six, from "(h.) The Local Government Board" to "validity of any vote."*

Schedule 2.

Session and Chapter.	Short Title.	Extent of Repeal.
48 & 49 *Vict. c.* 53 .	*The Public Health (Members and Officers) Act*, 1885.	*Sections three and four.*
55 & 56 *Vict. c.* 53 .	*The Public Libraries Act*, 1892	*Sub-section three of section one.* *The First Schedule so far as it applies to rural parishes.*

THE HOUSING OF THE WORKING CLASSES ACT, 1894.

(57 & 58 VICT. c. 55.)

An Act to explain the provisions of Part II. of the Housing of the Working Classes Act, 1890, *with respect to powers of borrowing.* [25th August 1894.]

[In view of the possibility of a Bill for the consolidation of the Housing Acts being introduced and passed into law in the present (1922) Session of Parliament it has been thought advisable to take out of Vol. I. this Act and also the Housing of the Working Classes Acts, 1890, 1900 and 1903; the Housing, Town Planning, etc., Act, 1909; the Housing Act, 1914; the Housing (No. 2) Act, 1914; the Housing, Town Planning, etc., Act, 1919; the Housing (Additional Powers) Act, 1919; and the Housing Act, 1921. These Acts or the Consolidation Act (if any) which replaces them will be inserted in Vol. II.]

THE LOCAL GOVERNMENT (STOCK TRANSFER) ACT, 1895.

(58 & 59 VICT. c. 32.)

An Act to amend the Local Government Act, 1894, *so far as regards the Transfer of any Stock, Share, or Security standing in the name of, or Dividends payable to, a Local Authority.* [6th July 1895.]

Alteration of name on transfer of stock standing in the name of local authority.

1.—(1) Where any stock is standing in the books of any company in the name of any local authority the following provisions shall have effect:

(a) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, the name of the local authority is changed (*a*), then upon the request of such authority and the production of a statutory declaration by the clerk of the authority specifying the stock, and verifying the change of name and identity of the authority, the company shall enter such stock in the new name of the local authority in like manner as if the stock had been transferred to the authority under that name, and pay to that authority all dividends accrued and to accrue due thereon:

(b) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, any other local authority becomes entitled to the stock or any dividends thereon (*b*), a certificate of the clerk of the county council, or the order or award under which the local authority becomes so entitled shall be a sufficient authority to the company to transfer the stock into the name of the local authority specified in that behalf in the order, award, or certificate, and to pay the dividends to such authority :

(c) If in any other case any other local authority is entitled to the stock or any dividends thereon, the court may on application make an order vesting in such authority or person as the court may direct, the right to transfer the said stock, or pay such dividends, to the authority in or to whom the same ought to be vested or paid, and the Trustee Act, 1893, shall apply in like manner as if the vesting order were made under section thirty-five of that Act (*c*).

(2) In this Act—

" A local authority " includes any urban or rural sanitary authority, council of a borough, improvement commissioners, local board, urban district council, rural district council, board of guardians, highway board, burial board, parish council, overseers, churchwardens and overseers, and chairman of a parish meeting and overseers :

" County council " includes the council of a county borough :

" Order of a county council " means an order made either by a county council or by any joint committee of county councils, and, if such order requires confirmation by the Local Government Board, means the order as confirmed by that Board :

" Company " includes the Bank of England, and any company or person keeping books in which any stock is registered :

" Stock " includes any share, annuity, or other security.

(3) The jurisdiction of the court under this Act may be exercised by the High Court, or in cases within the jurisdiction of a palatine court or county court, by that court (*d*).

(*a*) It may be necessary to change the name of a local authority when its district is altered or divided under s. 54 or s. 57 of the L. G. A., 1888, *ante*, pp. 768, 770 ; or its name may be changed under the L. G. A., 1894, s. 55, *ante*, p. 970.

(*b*) This may happen when a district is divided or altered and an adjustment has been made.

(*c*) The effect of this is that the authority may transfer the stock according to the order, and the company must obey the order according to its tenor, and after receiving written notice thereof, it will not be lawful for the company to transfer the stock or pay dividends otherwise than in accordance with the order.

(*d*) See as to this section generally the remarks of VAUGHAN WILLIAMS, L.J., in *Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716 ; 68 J. P. 584.

2. This Act may be cited as the Local Government (Stock Transfer) Act, 1895. Short title.

Section 1.

THE LOCAL GOVERNMENT (ELECTIONS) ACT, 1896.

(59 VICT. c. 1.)

An Act to continue temporarily certain Powers for the Removal of Difficulties at Elections under the Local Government Act, 1894.

[6th March 1896.]

Power of county council to remove difficulties.

1.—(1) If any difficulty arises with respect to any election of parish or district councillors or of guardians, or to the first meeting after any ordinary election of such councillors or guardians, or if, from an election not being held, or being defective, or otherwise, the council or board has not been properly constituted, the county council may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of any such election or meeting, and properly constituting the council or board, and may, if it appears to them necessary, direct the holding of an election or meeting, and fix the dates for any such election or meeting.

(2) Any such order may modify the provisions of the Local Government Act, 1894, and the enactments applied by, or rules framed under, that Act, so far as may appear to the county council necessary or expedient for carrying the order into effect.

This Act supplements the powers given by the L. G. A., 1894, ss. 48 (5), 59 (5), whereby county councils may order new elections if difficulties arise as to the elections of individual councillors or guardians, and may otherwise make orders if difficulties arise. It is practically a re-enactment of *ibid.*, s. 80 (1), which made provision only as to the first elections after the passing of that Act. For observations as to the powers of a county council thereunder and under s. 48 (5), see *R.* v. *Miles*, p. 964. *ante.*

(3) A county council may delegate their powers under this section to a committee.

Duration.

2. *This Act shall continue in force until the thirty-first day of December one thousand eight hundred and ninety-seven, and no longer, unless continued by Parliament.*

The Act had been continued in force by the Expiring Laws Continuance Acts until made permanent by s. 35 of the Representation of the People Act, 1918, *post*, p. 1099.

Short title.

3. This Act may be cited as the Local Government (Elections) Act, 1896.

THE LOCAL GOVERNMENT (DETERMINATION OF DIFFERENCES) ACT, 1896.

(59 & 60 VICT. c. 9.)

An Act to amend certain Provisions of the Local Government Act, 1888, *with respect to the Determination of Differences by the Local Government Board.*

[21st May 1896.]

Amendment of 51 & 52 Vict. c. 44,

1. The Local Government Act, 1888, shall have effect, as if in sub-sections three and four of section eleven (*a*) of that Act for the words

" be determined by arbitration of the Local Government Board," and in sub-section nine of the same section for the words " be referred to the arbitration of the Local Government Board," were substituted the words " be determined by the Local Government Board either as arbitrators or otherwise at the option of the Board," and as if in section sixty-three of that Act for the words " are required in pursuance of this Act to decide," were inserted the words " determine as arbitrators."

Section 1.

s. 11, as to determination of differences.

For "Local Government Board" now read "Minister of Health" (9 & 10 Geo. 5, c. 21).

(*a*) *Ante*, pp. 741, 742. By that section, certain differences arising thereunder between a county council and a district council with reference to the maintenance, etc., of main roads and other matters connected with highway administration, might be referred to and determined by arbitration of the L. G. B. It was held in *In re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456, that the Board should, when a difference under the section was referred to their arbitration, proceed to appoint an arbitrator in accordance with the provisions of s. 63 of the Act, but that course is usually not a convenient one. The effect of the amendments hereby made in s. 11 is that the Board may decide any such difference, either as arbitrators or otherwise at their option. It will only be where the Board determine a difference or other matter as arbitrators that they will be required to appoint an arbitrator under s. 63. See further the notes to s. 11, p. 741, *ante*. The validation of previous orders of the Board on this subject was provided for by s. 2, *infra*.

By the L. G. A., 1899, s. 7 (1), where any duty is transferred from the London County Council to a borough council by or under the Act, the county council shall contribute to the borough council such amount (if any) as may be finally determined by the L. G. B. (now M. of H.). By s. 28 (3), when the L. G. B. (now the Ministry of Health) are authorised by the Act to determine any matter, they may determine it as arbitrators or otherwise. An application was made by several metropolitan borough councils to the Board to determine the amount to be contributed by the county council in respect of the maintenance of main roads which was transferred to the borough councils by s. 6 (1) of the Act. The Board came to the conclusion that on equitable grounds no contribution should be made, and they therefore decided " otherwise than as arbitrators " that none should be made. On an application for a *mandamus* directing the Board to hear and determine the application according to law, the court declined to interfere (*R.* v. *L. G. B.* (1908), 72 J. P. 211).

2. [*Validation of past orders.*]

Repealed as spent by the S. L. R. A., 1908.

3. This Act may be cited as the Local Government (Determination of Differences) Act, 1896.

Short title.

THE PUBLIC HEALTH ACT, 1896.

(59 & 60 VICT. c. 19.)

An Act to make further Provision with respect to Epidemic, Endemic, and Infectious Diseases, and to repeal the Acts relating to Quarantine.

[7th August 1896.]

1.—(1) Regulations of the Local Government Board made in pursuance of section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875 (*a*), or in pursuance of either of those sections, as extended to London by the Public Health (London) Act, 1891, may provide for such regulations being enforced and executed

Amendment of 38 & 39 Vict. c. 55, ss. 130, 134, as to regulations with respect to disease.

Section 1. by the officers of Customs and the officers and men employed in the coastguard as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by those sections may provide for—

(a) the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board ; and

(b) the questions to be answered by masters, pilots, and other persons on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel ; and

(c) the detention of vessels and of persons on board vessels ; and

(d) the duties to be performed in cases of such disease by masters, pilots, and other persons on board vessels.

(2) Provided that the regulations shall be subject to the consent—

(a) so far as they apply to the officers of Customs, of the Commissioners of her Majesty's Customs ; and

(b) so far as they apply to officers or men employed in the coastguard, of the Admiralty ; and

(c) so far as they apply to signals, of the Board of Trade.

(3) If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875 (*a*), or in pursuance of either of those sections as extended to London by the Public Health (London) Act, 1891, and as amended by this Act, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues (*b*) ; and any such penalty, if not recovered under the provisions of the Acts relating to public health (*c*), shall be recoverable by action on behalf of the Crown in the High Court.

(*a*) *Ante*, pp. 237, 246. These sections empower the board (now the Ministry of Health) to make regulations for the treatment of persons affected with cholera or any epidemic, endemic, or infectious diseases, and preventing the spread of cholera and such other diseases ; and, in case any part of England is affected or threatened by any formidable epidemic, endemic, or infectious disease, for the speedy interment of the dead, for house to house visitation, and for the provision of medical aid, etc.

The power to make regulations under this Act and the enactments mentioned therein, was extended by the P. H. A., 1904, s. 1, p. 1013, *post*, to the making of regulations for carrying into effect conventions with respect to the prevention of danger arising to public health from vessels, and the prevention of the conveyance of infection by means of vessels ; it was further extended by the Public Health (Regulations as to Food) Act, 1907, p. 1017, *post*, to the making of regulations as to the importation, preparation, storage, and distribution of articles of food.

As to the regulations at present in force under the Act of 1875, as amended by the Acts of 1896 and 1904, see notes to s. 130, *ante*, p. 237. As to regulations under the Act of 1907, see notes thereto, p. 1018, *post*.

(*b*) See generally as to obstructing a local authority in the execution of the P. H. Acts, s. 306 of the P. H. A., 1875, and the notes thereto, *ante*. p. 640. This penalty clause replaces that originally contained in s. 130 of the Act of 1875, which is repealed by s. 6, *infra* ; it appears also to supersede s. 140, which is not so repealed. It is questionable whether the daily penalty is incurred before as well as after conviction. See the definition of " daily penalty " in s. 11 (3) of the P. H. A., 1890, *ante*, p. 826, and note thereon.

(*c*) See s. 251 of the P. H. A., 1875, *ante*, p. 551.

2. The powers exerciseable by her Majesty in Council or any two of the Lords of her Majesty's Privy Council under section two hundred and thirty-four of the Customs Consolidation Act, 1876 (*a*), shall be exerciseable by the Local Government Board, and accordingly in that section the words "the Local Government Board," shall be substituted for the words "her Majesty in Council or any two Lords of her Majesty's Privy Council." **Section 2.** Transfer of powers under 39 & 40 Vict. c. 36, s. 234.

(*a*) By the Customs Consolidation Act, 1876, s. 234, her Majesty in Council, or any two lords of the Council, were empowered from time to time by order to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands, or the Isle of Man, or having touched at any place out of the United Kingdom abroad, where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit the vessel before the state of health of the persons on board shall have been ascertained on examination by the proper officer of customs at the place or places appointed by the commissioners of customs for the purpose, and before permission to land has been given. The section provides for the imposition of penalties on any person so quitting the vessel, and on the master, pilot, or person in charge of the ship if he does not on arrival at the place appointed hoist and continue the signal directed by the order until the proper officer has given permission to haul it down.

The powers of the Local Government Board are now transferred to the Ministry of Health.

3. [*Application to Scotland.*] (*a*).

4. [*Application to Ireland.*]

5. In the making of the regulations referred to in this Act regard shall be had to the expediency of uniform regulations throughout the whole of the United Kingdom. Regulations to be uniform.

6. *The enactments relating to quarantine mentioned in the Schedule to this Act, and the other enactments therein mentioned, shall be repealed, as to the whole of the British Islands, to the extent appearing in the third column of that Schedule* (*a*).

7. *This Act shall come into operation on the expiration of three months from the passing thereof* (*a*).

8. This Act may be cited as the Public Health Act, 1896. Short title.

SCHEDULE (*a*).

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
6 *Geo.* 4, *c.* 78 – –	*The Quvrantine Act*, 1825	*The whole Act.*
7 *Will.* 4 & 1 *Vict. c* 36.	*The Post Office (Offences) Act*, 1837.	*In section six the words "and every master of a vessel, or any other person on board any ship liable to the performance of quarantine, who shall neglect or refuse to deliver to the person or persons appointed to superintend the quarantine all letters in his possession, shall forfeit twenty pounds."*

(*a*) Repealed by the S. L. R. A., 1908.

Schedule.

Session and Chapter.	Short Title.	Extent of Repeal.
3 & 4 *Vict.* c. 96– –	*The Post Office (Duties) Act*, 1840.	*Section thirty-six from "and also except such letters" to "despatched in the usual manner by the post."*
17 & 18 *Vict.* c 94 –	*The Public Revenue and Consolidated Fund Charges Act*, 1854.	*In Schedule B. the words "expenses of quarantine."*
30 & 31 *Vict.* c. 101 –	*The Public Health (Scotland) Act*, 1867.	*Sections thirty-one, thirty-four, and fifty-six.*
38 & 39 *Vict.* c. 55 –	*The Public Health Act*, 1875.	*Section one hundred and thirty from "Any person wilfully" to the end of the section.* *In Part III. of Schedule V. the words re-enacting* 29 & 30 *Vict.* c. 90, *ss.* 51 *and* 52.
39 & 40 *Vict.* c. 36 –	*The Customs Consolidation Act*, 1876.	*In section two hundred and thirty-four the words "whether or not it shall on or after such examination be found expedient to order such vessels under the restraint of quarantine," and the words "and any penalty incurred under the Act of the sixth year of the reign of King George the Fourth chapter seventy-eight."*
52 & 53 *Vict.* c. 64 –	*The Public Health Act*, 1889.	*The whole Act.*
54 & 55 *Vict.* c. 76 –	*The Public Health (London) Act*, 1891.	*In section one hundred and forty-two the words "sections fifty-one and fifty-two of the Sanitary Act*, 1866, *and."* *So much of the Act as extends or applies any provision of the Public Health Acts which is repealed by this Act, and in particular the second paragraph of section one hundred and thirty of the Public Health Act*, 1875, *and the whole of section two of the Public Health Act*, 1889, *as set out in the First Schedule to the Act.*

THE PUBLIC HEALTH (PORTS) ACT, 1896.

(59 & 60 VICT. c. 20.)

An Act to amend the Public Health Act with respect to the Powers of Port Sanitary Authorities. [7th August 1896.]

Powers of port sanitary authority.

1. The Local Government Board may by order assign to any port sanitary authority (*a*) any powers, rights, duties, capacities, and obligations under the Infectious Disease Prevention Act, 1890 (*b*), with the necessary modifications.

The powers of the Local Government Board are now transferred to the Minister of Health.

(*a*) As to the constitution and general powers of port sanitary authorities see s. 287 of the P. H. A., 1875, *ante*, p. 622.

By an Order dated August 20th, 1912 (see App. II., *post*, Vol. II.), the Board assigned to port sanitary authorities (other than that of the Port of London) all powers, duties, etc., under s. 5 of the Act of 1890, in relation to any infectious disease to which the P. H. A., 1875, applies, and under ss. 16, 17, 18 and 20, so far as those

sections relate to the exercise of powers under s. 5. The Order makes certain modifications in the sections referred to. The effect of the Order is, as regards the cleansing and disinfection of ships, to substitute the procedure under the Act of 1890 for that under the P. H. A., 1875, s. 120, p. 227, *ante*.

Note to Section 1.

(*b*) *Ante*, p. 807.

2. This Act may be cited as the Public Health (Ports) Act, 1896, and shall be construed as one with the Public Health Act, 1875.

Short title and construction.

THE CHAIRMEN OF DISTRICT COUNCILS ACT, 1896.

(59 & 60 VICT. c. 22.)

An Act to exempt certain Chairmen of District Councils who have already taken the Oath from again taking the Oath before acting as Justices of the Peace. [7th August 1896.]

1. A chairman of a district council who has been re-elected to that office on the expiration or other determination of a previous term of office may continue to act as a justice of the peace without again taking the oaths mentioned in section twenty-two of the Local Government Act, 1894 (*a*).

Chairman on re-election need not again take oath as justice of peace.

(*a*) See this section and notes thereto, *ante*, p. 927.

2. This Act may be cited as the Chairmen of District Councils Act, 1896.

Short title.

THE LOCAL GOVERNMENT (JOINT COMMITTEES) ACT, 1897.

(60 & 61 VICT. c. 40.)

An Act to amend the Local Government Act, 1894, *with regard to Joint Committees for the purposes of the Burial Acts.* [6th August 1897.]

1.—(1) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894 (*a*), for the purposes of the Burial Acts, 1852 to 1885—

Joint committees for Burial Acts.

(a) Any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those purposes shall be borrowed, and any receipts arising from those purposes shall be divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board (*b*);

(b) The consent of the Local Government Board shall be required to the borrowing by any council of any money required to

Section 1.

be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government Act, 1894, or any other Act (*c*);

(c) Part IV. of the First Schedule to the Local Government Act, 1894 (*d*), shall apply to the proceedings of the committee.

(2) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board.

(3) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the parish meeting, and the parish meeting shall have the same power of borrowing for the purposes of the Burial Acts as a parish council would have (*e*).

(*a*) See notes to this section, p. 966, *ante*. Doubts had arisen as to the applicability of s. 57 of the Act of 1894 to joint committees appointed under s. 53, and this Act removes difficulties as regards such joint committees when appointed for the purposes of the Burial Acts. But with regard to other joint committees (probably very few in number), those difficulties remain and can only be avoided by an alteration of areas.

(*b*) The determination of the county council or of the L. G. B. (now the Ministry of Health), as the case may be, appears to be final. Expenses incurred in providing and laying out a burial ground for a parish and building the necessary chapels must not exceed the amount authorised by the parish meeting. See the Burial Act, 1852, s. 19, as amended by the L. G. A., 1894, s. 7 (3). As explained in the note under s. 53 (2), *ante*, p. 967, it would seem that this consent must still be obtained from the parish meeting of a parish appointing a joint committee under s. 53, and that in the case of an urban district the consent of the vestry is required.

(*c*) This dispenses with the necessity for the sanction of a parish meeting, whose consent to *expenditure* is, however, still required (see preceding note), and the approval of the Treasury under the Burial Act, 1852, s. 20, for the approval of the Treasury under the Burial Act, 1862, s. 1, and for the consent of the county council under the L. G. A., 1894, s. 12. See also the Local Authorities (Treasury Powers) Act, 1906, *post*, p. 1013.

An urban district council can only borrow for 30 years, while a parish council may do so for 60 years. This is an anomaly when each council is merely finding a contribution to a common purpose. See *ante*, p. 715.

(*d*) *Ante*, p. 997.

(*e*) See s. 12 of the L. G. A., 1894.

Short title.

2. This Act shall be construed as one with the Local Government Act, 1894, and may be cited as the Local Government (Joint Committees) Act, 1897.

THE INFECTIOUS DISEASE (NOTIFICATION) EXTENSION ACT, 1899.

(62 & 63 VICT. c. 8.)

An Act to extend the Infectious Disease (Notification) Act, 1889, to Districts in which it has not been adopted. [20th June 1899.]

Extension of 52 & 53 Vict. c. 72.

1.—(1) The Infectious Disease (Notification) Act, 1889 (*a*), shall *after the commencement of this Act* extend to and take effect in every urban, rural, and port sanitary district, as defined for the purposes of

that Act, in England or Wales, whether that Act has or has not been adopted therein before the commencement of this Act. Section 1.

(2) *In any such district in which the Infectious Disease (Notification) Act,* 1889, *has not been adopted before the commencement of this Act, that Act shall for the purposes of section fourteen thereof (which relates to the operation of local Acts) (b) be treated as having been put in force on the commencement of this Act.*

Italicised words in this Act repealed by the S. L. R. A., 1908.

(*a*) *Ante*, p. 798.

(*b*) By s. 14 of the principal Act, *ante*, p. 804, where that Act is put in force in any district in which there is a local Act for the like purpose as that Act, the enactments of such local Act, so far as they relate to that purpose, shall cease to be in operation; but Huddersfield is an exception. See next section.

2. Nothing in this Act shall be construed to repeal, alter, or affect the provisions of any local Act which immediately before the passing of this Act was in force within the county borough of Huddersfield. Saving for Huddersfield.

3.—(1) This Act may be cited as the Infectious Disease (Notification) Extension Act, 1899, and the Infectious Disease (Notification) Act, 1889, and this Act may be cited together as the Infectious Disease (Notification) Acts, 1889 and 1899. Short title.

(2) *The enactments specified in the Schedule to this Act are hereby repealed, as regards England and Wales, to the extent mentioned in the third column of that Schedule.*

(3) *This Act shall come into operation upon the first day of January one thousand nine hundred.*

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
52 & 53 *Vict. c.* 72	*The Infectious Disease (Notification) Act,* 1889.	*In section two the words "after the adoption thereof." Section five.*

THE DISTRICT COUNCILLORS AND GUARDIANS (TERM OF OFFICE) ACT, 1900.

(63 & 64 VICT. c. 16.)

An Act to make further provision for the Term of Office of District Councillors and Guardians. [10th July 1900.]

1.—(1) Where, in pursuance of the Local Government Act, 1894, on such application or request as in that Act is mentioned (*a*), an order or Power to rescind orders

Section 1. as to retirement of district councillors or guardians.

direction has been or hereafter may be made or given by the council of a county or county borough, or a joint committee of any such councils, as the case may be, with respect to the retirement of members of an urban or rural district council, or of a board of guardians, the council or joint committee may, on that like application or request, by order rescind such first-mentioned order or direction.

(*a*) See the L. G. A., 1894, s. 20 (6), *ante*, p. 925, and s. 23 (6), p. 930, *ante*.

(2) Every order made in pursuance of this section shall provide for all matters necessary or proper for carrying into effect the objects of the said order; and, in particular, shall require all the councillors or guardians in office at the date thereof to go out of office, and their places to be filled by the new-elected councillors or guardians, on the fifteenth day of April next following that date (*a*).

(*a*) See the L. G. A., 1894, ss. 20 (6), 23 (6), and 24 (4), *ante*, pp. 925, 930, 931.

(3) Where an order, made in pursuance of this section, rescinds an order made in pursuance of sub-section three of section sixty of the Local Government Act, 1894, the proviso (*a*) to that sub-section shall apply as if the first-mentioned order were made under the said sub-section.

(*a*) By the proviso referred to "if any order under this sub-section is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, it shall be of no effect until confirmed by the Local Government Board."

Short title.

2. This Act may be cited as the District Councillors and Guardians (Term of Office) Act, 1900.

THE MEMBERS OF LOCAL AUTHORITIES RELIEF ACT, 1900.

(63 & 64 VICT. c. 46.)

An Act to relieve Members of County Councils and other Local Authorities from Disqualification by reason of absence in certain cases.

[6th August 1900.]

Short title.

1. This Act may be cited as the Members of Local Authorities Relief Act, 1900.

Relief from disqualification by reason of absence in certain cases.

2. Notwithstanding anything contained in the Municipal Corporations Act, 1882, or in the Local Government Acts, 1888 and 1894, or in the Local Government (Ireland) Act, 1898, or in any Order in Council thereunder, an officer or soldier of the auxiliary forces or of the reserve forces on active service, or on service beyond the seas, shall not by reason only of his absence on that service be disqualified or vacate his office as a member of any county or borough or district or parish council, or board of guardians, or incur any fine or other liability.

See s. 46 (6), (8) of the L. G. A., 1894, *ante*, pp. 959, 960. The provisions of this Act were extended during the late war to all members of the naval and military forces

and to all persons whose employment in connection with naval or military service the Local Government Board considered might properly be treated as on such service (5 Geo. 5, c. 10).

Note to Section 2.

3. In this Act the expressions "soldier," "reserve forces," "auxiliary forces," "active service," and "beyond the seas," have the meanings respectively assigned to them by the Army Act.

Interpretation.

By s. 190 of the Army Act, 1881—

(4) The expression "officer" means an officer commissioned or in pay as an officer in her Majesty's forces, or any arm, branch, or part thereof; it also includes a person who, by virtue of his commission, is appointed to any department or corps of her Majesty's forces, or of any arm, branch, or part thereof; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of her Majesty's said forces, or of any arm, branch, or part thereof:

Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned.

. . . . . .

(6) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject.

. . . . . .

(9) The expression "reserve forces" means the Army Reserve Force and the Militia Reserve Force [now obsolete, see the Reserve Forces Act, 1882].

. . . . . .

(12) The expression "auxiliary forces" means the territorial force, the militia, the yeomanry, and the volunteers [see now the Territorial and Reserve Forces Act, 1907, and the Territorial Army and Militia Act, 1921].

By s. 189 (1): In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country. And by s. 190 (20): The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates; (24) the expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas; (25) the expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and the Isle of Man.

THE HOUSING OF THE WORKING CLASSES ACT, 1900.

(63 & 64 VICT. c. 59.)

An Act to amend Part III. of the Housing of the Working Classes Act, 1890. [8th August 1900.]

[In view of the possibility of a Bill for the consolidation of the Housing Acts being introduced and passed into law in the present (1922) Session of Parliament it has been thought advisable to take out of Vol. I. this Act and also the Housing of the Working Classes Acts, 1890, 1894, and 1903; the Housing, Town Planning, etc., Act, 1909; the Housing Act, 1914; the Housing (No. 2) Act, 1914; the Housing,

Town Planning, etc., Act, 1919; the Housing (Additional Powers) Act, 1919; and the Housing Act, 1921. These Acts or the Consolidation Act (if any) which replaces them will be inserted in Vol. II.]

THE LOCAL GOVERNMENT (TRANSFER OF POWERS) ACT, 1903.

(3 EDW. 7, c. 15.)

An Act to amend section ten of the Local Government Act, 1888.

[11th August 1903.]

Construction of 51 & 52 Vict. c. 41, s. 10.

1.—(1) Section ten of the Local Government Act, 1888, in so far as it authorises the transfer to county councils of certain powers, duties and liabilities of Government Departments, shall be construed as authorising the transfer by Provisional Order of all or any of those powers, duties or liabilities to the council of a particular county or county borough, as well as to such councils generally.

(2) A Provisional Order shall not be made under this section except on the application of the council of a county or county borough.

(3) Where the Local Government Board propose to make a Provisional Order under this section transferring any power, duty or liability to the council of a county or county borough, the Board shall give notice to all local authorities who, in the opinion of the Board, are likely to be affected by the transfer, and if, within such time as the Board prescribe, a majority of those authorities notify to the Board that they object to any such proposed transfer, the Order shall not be proceeded with so far as relates to that transfer, but without prejudice to the power of the Board to propose a new Order.

(4) For the purposes of this Act, the expression "local authorities" means the following local authorities, namely, the council of a borough or other urban district, a rural district council, a board of guardians, a metropolitan borough council and the Common Council of the city of London.

The powers of the Local Government Board have now been transferred to the Minister of Health (9 & 10 Geo. 5, c. 21).

See s. 10 of the L. G. A., 1888, *ante*, p. 735.

Short title.

2. This Act may be cited as the Local Government (Transfer of Powers) Act, 1903.

THE HOUSING OF THE WORKING CLASSES ACT, 1903.

(3 EDW. 7, c. 39.)

An Act to amend the Law relating to the Housing of the Working Classes.

[14th August 1903.]

[In view of the possibility of a Bill for the consolidation of the Housing Acts being introduced and passed into law in the present (1922) Session of Parliament it has been thought advisable to take out of Vol. I. this Act and also the Housing

of the Working Classes Acts, 1890, 1894, and 1900; the Housing, Town Planning, etc., Act, 1909; the Housing Act, 1914; the Housing (No. 2) Act, 1914; the Housing, Town Planning, etc., Act, 1919; the Housing (Additional Powers) Act, 1919; and the Housing Act, 1921. These Acts or the Consolidation Act (if any) which replaces them will be inserted in Vol. II.]

THE PUBLIC HEALTH ACT, 1904.

(4 EDW. 7, c. 16.)

An Act to enable Regulations to be made for carrying into effect conventions with respect to the prevention of danger arising to public health from vessels, and the prevention of the conveyance of infection by means of vessels. [15th August 1904.]

Sanitary regulations as to vessels.

1.—(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from vessels arriving at any port, and for the prevention of the conveyance of infection by means of any vessel sailing from any port, so far as may be necessary or expedient for the purpose of carrying out any treaty, convention, arrangement or engagement with any foreign country, and the regulations may in particular provide for the recovery of any expenses incurred in disinfection and of any charges authorised to be made by the regulations for the purpose of those regulations or any services performed thereunder, and also for any powers and duties under the regulations being executed and performed by local authorities:

Provided that the regulations shall not be made except after consultation with the Board of Trade.

(2) In the application of this Act to Scotland, Part IV. of the Public Health (Scotland) Act, 1897, shall be substituted for the Public Health Act, 1896.

(3) This Act shall extend to the Isle of Man with the substitution of section eight of the Local Government Amendment Act (Isle of Man), 1897, for the Public Health Act, 1896.

See the P. H. A., 1896, s. 1, and notes thereto, *ante*, p. 1003.

Short title.

2. This Act may be cited as the Public Health Act, 1904.

THE LOCAL AUTHORITIES (TREASURY POWERS) ACT, 1906.

(6 EDW. 7, c. 33.)

An Act to transfer to the Local Government Board the Powers of the Treasury under enactments relating to Local Authorities. [4th August 1906.]

Transfer from Treasury to Local

1.—(1) The Local Government Board shall exercise as regards every local authority in England, except the London County Council, any

Section 1.

Government Board of powers relating to property and loans of local authorities.

power conferred on the Treasury by any enactment contained in, applied by, or incorporated with the Baths and Washhouses Acts, 1846 to 1899, or the Burial Acts, 1852 to 1900, or any local or private Act, as respects dealings with property, loans, and matters connected therewith; and all such enactments, and all enactments referring to the powers so conferred, shall be construed accordingly.

(2) Any such power, if exercised before the passing of this Act, whether by the Treasury or by the Local Government Board, shall be deemed to have been duly exercised.

(3) If any question arises as to whether this Act applies to any power conferred by, or referred to in, any enactment, the decision of the Treasury shall be conclusive for all purposes.

(4) Sub-sections (1) and (5) of section eighty-seven of the Local Government Act, 1888 (which relates to local inquiries), shall apply for the purpose of the carrying out by the Local Government Board of any of the powers transferred to them under this Act.

In any borough (including a metropolitan borough) or district in which the Baths and Washhouses Acts, 1846 to 1899, had been adopted, it had previously been necessary that the approval of the Treasury should be obtained to the appropriation or alienation of land under ss. 24, 31 and 32 of the Act of 1846.

The Treasury had also been the department whose approval was required to the borrowing of money by burial boards; and where the council of a borough or urban district had been constituted a burial board, or had had transferred to them the powers and duties of a burial board, the Treasury had in nearly every case been the department whose approval was required to the borrowing of money by the council for the purposes of the Burial Acts, 1852—1900.

Again, the L. G. A., 1888, s. 72, provided that the L. G. B. should exercise as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, and as respects the approval of loans and of alienation of property and other matters therein mentioned. Powers had, however, been conferred from time to time upon the Treasury by various local or private Acts in relation to the property and loans of town councils, and in some cases it had been a matter of doubt whether the enactment above referred to had or had not transferred to the L. G. B. the powers with which the Treasury were thus invested.

The effect of sub-s. (1) of s. 1 of the present Act is to substitute the L. G. B. (now the Ministry of Health) for the Treasury in relation to the matters above referred to.

Short title.

2. This Act may be cited as the Local Authorities (Treasury Powers) Act, 1906.

THE PREVENTION OF CORRUPTION ACT, 1906.

(6 EDW. 7, c. 34.)

An Act for the better Prevention of Corruption (*a*). [4th August 1906.]

(*a*) The Public Bodies Corrupt Practices Act, 1889, 52 & 53 Vict. c. 69, *ante*, p. 794, and the Prevention of Corruption Act, 1916 (6 & 7 Geo. 5, c. 64), *post*, p. 1087, may be cited as the Prevention of Corruption Acts, 1889 to 1916.

Punishment of corrupt transactions with agents.

1.—(1) If any agent (*b*) corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for

any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent (*b*), or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal (*bb*);

he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine (*c*).

(*b*) A person serving under any public body within the meaning of the Act of 1889 as amended by s. 4 of the Act of 1916, in addition to the bodies mentioned in that Act, is an agent within the meaning of this Act. See the Act of 1916, s. 4 (3), *post*, p. 1089.

A police constable on duty is an agent for purposes of this Act. See *Graham* v. *Hart* (1908), S. C. (J.) 26; see also *Secret Commissions and Bribery Prevention League* v. *Martin* (1913), 48 L. Jo. 183; *R.* v. *Whitaker*, [1914] 3 K. B. 1283; 79 J. P. 28.

(*bb*) This paragraph is not limited either by the title of the Act or by the context of the two preceding paragraphs to cases in which the defendant acts corruptly. Neither the corruption nor the attempted corruption of the agent nor his knowledge of the falsity of the statement is a necessary ingredient in the offence created by this paragraph. See *Sage* v. *Eicholz*, [1919] 2 K. B. 171; 83 J. P. 170.

(*c*) A person convicted on indictment of a misdemeanour under this section shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any government department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years; but this is not to prevent the infliction in addition to penal servitude of such punishment as under the Acts of 1889 or 1906 may be inflicted in addition to imprisonment, or to prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts. See the Act of 1916, s. 1, *post*, p. 1088.

Where in proceedings under the Act of 1889 or this Act it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any government department or a public body by or from a person, or agent of a person holding or seeking to obtain a contract from His Majesty or any government department or public body, the money, gift, or

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consideration shall be deemed to have been paid or given or received corruptly or as such inducement or reward as is mentioned in such Acts unless the contrary is proved. See the Act of 1916, s. 2, *post*, p. 1088. With regard to the time within which summary proceedings may be commenced, see the Act of 1916, s. 3, *post*, p. 1088.

(2) For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another (*d*), and the expression "principal" includes an employer.

(3) A person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act (*d*).

(*d*) See note (*b*), *ante*, p. 1015.

Prosecution of offences.

2.—(1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

22 & 23 Vict. c. 17.

(2) The Vexatious Indictments Act, 1859, as amended by any subsequent enactment, shall apply to offences under this Act as if they were included among the offences mentioned in section one of that Act (*e*).

(*e*) For the provisions of those Acts reference may be made to Halsbury's Laws of England, Vol. IX., pp. 320, 331.

(3) Every information for any offence under this Act shall be upon oath.

(4) The expenses of any prosecution on indictment under this Act shall be defrayed as in cases of indictment for felony.

(5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, and determine prosecutions on indictments for offences under this Act.

(6) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

3. [*Scotland.*]

Short title and commencement.

4.—(1) This Act may be cited as the Prevention of Corruption Act, 1906.

(2) This Act shall come into operation on the first day of January nineteen hundred and seven.

THE REMOVAL OF OFFENSIVE MATTER ACT, 1906.

Section 1.

(6 EDW. 7, c. 45.)

An Act to repeal the provisions of the Metropolitan Police Act, 1839, with respect to the removal of Offensive Matter in places within the Metropolitan Police District. [21st December 1906.]

1. Paragraph (4) of section sixty of the Metropolitan Police Act, 1839 (which paragraph relates to the emptying of privies and the removal of offensive matter), is hereby repealed. Repeal of 2 & 3 Vict. c. 47, s. 60, as to offensive matter

Paragraph (4) of s. 60 of the Act of 1839 was as follows: "Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering, or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped or spilled; and in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender: Provided always, that this enactment shall not be construed to prevent the commissioners of sewers within the metropolitan police district, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorised to cleanse or empty."

So far as regards the county of London this paragraph was repealed by the P. H. (London) A., 1891, but it continued in force in the area of the police district outside that county until the passing of the present Act. It was generally considered that it prevented byelaws as to the same subject-matter being made under the P. H. A., 1875, s. 44, or the P. H. A., 1890, s. 26 (1) (if in force), by urban and rural councils within the limits of the metropolitan police district; and consequently there were but few areas within that district where such byelaws had been made.

In the case of any district adjoining the county of London now proposing byelaws for regulating the removal of offensive matters, due regard will doubtless be had to the byelaw on the same subject made by the L. C. C. Under that byelaw removal during hours of darkness, which was permissible under the Police Act, is virtually prohibited, and difficulty had arisen in the past where removals had taken place from London into the surrounding districts from the conflict of the hours of removal fixed by the Act and the byelaw respectively. The L. G. B. are not prepared to confirm any byelaw which prescribes hours of darkness as times for removal, as they are advised that proper supervision by the officers of the council is then hardly feasible, and that the offences sought to be prevented by the byelaw are the more likely to arise.

2. This Act may be cited as the Removal of Offensive Matter Act, 1906. Short title.

THE PUBLIC HEALTH (REGULATIONS AS TO FOOD) ACT, 1907.

(7 EDW. 7, c. 32.)

An Act to enable regulations to be made for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food. [28th August 1907.]

1.—(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the Power to make regulations as to

Section 1. —— the importation, preparation, storage and distribution of articles of food.

power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

(a) provide for the examination and taking of samples of any such articles;

(b) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations;

(c) provide for the recovery of any charges authorised to be made by the regulations for the purposes of the regulations or any services performed thereunder.

(2) For the purposes of regulations made under this Act, articles commonly used for the food or drink of man shall be deemed to be intended for sale for human consumption unless the contrary is proved.

(3) In the application of this Act to Scotland, Part IV. of the Public Health (Scotland) Act, 1897, shall be substituted for the Public Health Act, 1896.

See the Public Health Act, 1896, p. 1003, *ante*, and notes thereto. The following Regulations have been issued under this Act:—

The Public Health (First series: Unsound Food) Regulations, 1908 (Sept. 12th, 1908);

The Public Health (Foreign Meat) Regulations, 1908 (Sept. 12th, 1908);

The Public Health (Foreign Meat) Amending Regulations, 1909 (Sept. 27th, 1909);

The Public Health (Milk and Cream) Regulations, 1912 (Aug. 1st, 1912).

The Public Health (Shell-fish) Regulations, 1915 (Feb. 16th, 1915).

The Milk and Dairies (Consolidation) Act, 1915, 5 & 6 Geo. 5, c. 66, s. 11, provides that the L. G. B. (now the Ministry of Health) shall make regulations under this Act for the prevention of danger arising to public health from the importation of milk and milk products intended for sale for human consumption or for use in the manufacture of products for human consumption. See the section and the notes thereto, *post*, Vol. II.

As to the above, see Circulars of Sept. 16th, 1908, Dec. 12th, 1908, Jan. 26th, 1909, April 29th, 1909, July 26th, 1909, Sept. 30th, 1909, Nov. 12th, 1910, Aug. 6th, 1912, and Feb. 17th, 1915.

Publication of regulations.

2. All regulations made under this Act shall be laid as soon as may be before Parliament, and the Rules Publication Act, 1893 (*a*), shall apply to such regulations as if they were statutory rules within the meaning of section one of that Act, and that Act as so applied shall, notwithstanding anything in sub-section five of section one thereof, extend to Scotland, with the substitution of a reference to the Edinburgh Gazette for the reference to the London Gazette.

(*a*) This Act (56 & 57 Vict. c. 66) provides for the giving of notice and deposit of draft rules before they are finally made so as to permit representations to be made with a view to their amendment; for the making of provisional rules in cases of urgency; and for the printing, sale and citation of statutory rules.

Short title.

3. This Act may be cited as the Public Health (Regulations as to Food) Act, 1907.

Section 1.

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1907 (*a*).

(7 EDW. 7, c. 53.)

An Act to amend the Public Health Acts. [28th August 1907.]

PART I (*b*).

GENERAL.

1. This Act is divided into Parts as follows : Division of Act into Parts.

Part I.—General.
II.—Streets and buildings.
III.—Sanitary provisions.
IV.—Infectious diseases.
V.—Common lodging-houses.
VI.—Recreation grounds.
VII.—Police.
VIII.—Fire brigade.
IX.—Sky signs.
X.—Miscellaneous.

(*a*) The object of this Act is to enable an authority to obtain certain additional powers without having to incur the expense of promoting a local Act. Its sections were founded upon provisions which had been allowed by Parliament in various local Acts. Object and scope of Act.

A town council or urban or rural district council desirous of exercising any of the powers conferred by the Act must apply to the Ministry of Health (or in the case of powers relating to police, fire brigades, or sky signs (Parts VII. to IX. of the Act), to the Home Secretary), for an Order declaring the part or section containing the desired powers to be in force in their borough or district.

Where a rural council obtain an Order, the Order will extend to such of the contributory places in the district as are specified in it (s. 3 (1)).

The Order may specify conditions subject to which any part or any section of the Act shall be in force in an urban district or contributory place, and where, in the opinion of the Ministry of Health (or Home Secretary), the circumstances so require, any such Order may, in relation to that district or contributory place, declare any part or section of the Act to be in force subject to such necessary adaptations as are specified in it (s. 3 (3), (4)). Any enactments in any "local Act" which appear to the Ministry of Health (or Home Secretary) to contain provisions similar to or inconsistent with the provisions extended to the district by the Order may be declared to be no longer in force in the district or contributory place to which the Order relates (s. 3 (1)). An enactment in a local Act may therefore be repealed by an Order of the Ministry of Health (or Home Secretary).

The Act does not contain a definition of the term "local Act" extending it to a Provisional Order (see, *e.g.*, the definition in the London Government Act, 1899, s. 34) and it is a question whether a Provisional Order, or an Act confirming such an Order, could be repealed by an Order under the Act, more especially where the confirming Act is deemed to be a public general Act. For instance, the P. H. A., 1875, s. 297 (8), provides that every Act confirming a Provisional Order of the L. G. B. under that Act shall be deemed to be a public general Act, and sub-s. (5) of the section provides for the repeal of the Act confirming any such Order by a further Provisional Order.

The expenses incurred by an authority in the execution of the provisions of the Act are to be defrayed as part of their expenses under the Public Health Acts, and in the case of a rural district are to be charged as general expenses, subject, however,

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to any power of the Ministry of Health under any Act to order expenses to be charged as special expenses (s. 4, *post*, p. 1022).

All powers given to an authority under the Act are to be deemed to be in addition to, and not in derogation of, any other powers conferred upon such authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if the Act had not been passed (s. 11, *post*, p. 1024), and nothing in the Act is to exempt any person from any penalty to which he would have been liable if the Act had not been passed; but no person is to be liable, except in the case of a daily penalty, to more than one penalty in respect of the same offence (*ibid.*).

The following passage is quoted from a special report (1908) of the Police and Sanitary Committee of the House of Commons:—"In their reports on the private Bills of this session, the Local Government Board have called attention to proposals originally embodied in the Public Health Bill of 1907, and afterwards omitted. In dealing with these the policy of your Committee has been to disallow all proposals which were rejected on their merits in that Bill, and to consider in the same manner as hitherto those which were dropped merely to lighten the Bill in its progress through Parliament. Your Committee also decided not to allow local authorities to incorporate in their Bill sections of the Public Health Act of 1907 which could be obtained on application to the proper Department under the Act. Your Committee are of opinion that the time has come for Parliament to consider whether pressure cannot be brought to bear on local authorities to induce them, in the interests of ratepayers and inhabitants, to consolidate, and, where necessary, amend their local Acts, by which means the labours of your Committee in several instances would have been considerably shortened, and a great deal of expense saved to the parties concerned. They would also recommend that certain common terms, such as 'new street,' 'common lodging-house,' etc., be defined by statute. The local interpretation of such terms can only lead to confusion and divergence in practice. They observe with satisfaction that a Bill 'to amend the Public Health Acts with respect to the combined drainage of two or more houses belonging to the same owner' is now before the House."

(*b*) Except as regards Part I. the Act is only operative to the extent to which particular parts or sections may have been applied to a district by an Order of the Ministry of Health or Home Secretary as the case may be. See ss. 2 (2), 3, and 13, *post*, pp. 1020, 1021, 1025, and see note (*a*), *supra*.

Short title, construction and extent of Act.

2.—(1) This Act shall be construed as one with the Public Health Acts.

See as to the Acts included in the expression "The Public Health Acts," note (*a*) on p. 820, *ante*, and the Short Titles Act, 1896, Sched. II. See also the P. H. A., 1896; the P. H. (Ports) A., 1896; and the P. H. A., 1904.

As to the effect of the provision that the Act shall be "construed as one with" the Public Health Acts, see the note under s. 1 of the Private Street Works Act, 1892, *ante*, p. 875. See also the express provisions of s. 13, *post*, p. 1025.

(2) Part I. of this Act shall extend to England and Wales and Ireland exclusive of the administrative county of London, and all or any of the remaining Parts or all or any of the sections thereof shall extend to any district to which all or any of those Parts or sections are applied by an Order (*a*) of the Local Government Board or of the Secretary of State as the case may be.

(*a*) See hereon, s. 3, *post*, p. 1021. For the L. G. B. must now be read the Ministry of Health.

(3) This Act may be cited as the Public Health Acts Amendment Act, 1907, and this Act and the Public Health Acts (*a*) may together be cited as the Public Health Acts, 1875 to 1907.

(*a*) See the note under sub-s. (1), *supra*.

(4) Any byelaws made under any enactment for which any provisions of this Act are substituted shall remain in force as if the byelaws had been made under the corresponding provisions of this Act.

But for this provision the bye-laws might have been held to be abrogated. See *Watson* v. *Winch*, [1916] 1 K. B. 688 ; 80 J. P. 149.

(5) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

Application of Parts or section of Act.

3.—(1) The Local Government Board may, on the application of a local authority (*a*), by Order to be published in such manner as the Local Government Board direct, declare any Part or any section of this Act to be in force in the district of the local authority, or, where the local authority are a rural district council, in any contributory place within the district of the local authority, and may declare any enactments in any local Act, which appear to the Local Government Board to contain provisions similar to or inconsistent with any such Part or section, to be no longer in force in that district or contributory place (*b*).

For the L. G. B. must now be read the Ministry of Health.

(*a*) See the definition in s. 13, *post*, p. 1025.

(*b*) See hereon note (*a*) under s. 1, *ante*, p. 1019.

(2) The local authority shall, two weeks at least before applying for an Order, give notice of their intention to make such application by advertising the same once at least in one or more of the newspapers circulating in their district in each of two successive weeks, and no order shall be made under this section until proof of such advertisement has been given to the satisfaction of the Local Government Board, and until at least one month has elapsed after the date of such advertisement.

Practice of the L. G. B. in regards to application.

With reference to applications under this section, the L. G. B. in a letter dated December 23rd, 1907, said :

" In considering whether application should be made to have any Part or section of the Act put in force, the local authority should have regard to the circumstances and needs of the locality. They should cause any local Act in force in their district to be carefully examined in order to ascertain whether it contains any provision bearing on the subject-matter of any Part or section of the present Act which they desire to have put in force.

" The Board will be ready to give attention to applications under the Act, but they think that such applications should not be made unless the local authority are satisfied that the powers sought are really needed.

" It is necessary that the local authority should, two weeks at least before applying to the Board for an Order, give notice of their intention to make the application by advertising the same once at least in one or more of the newspapers circulating in their district in each of two successive weeks, and no Order is to be made until proof of the advertisement has been given to the satisfaction of the Board, and until at least one month has elapsed after the date of such advertisement (s. 3 (2)).

" The application, which should not be made until after the expiration of two weeks from the date of the second week's advertisement, should be by resolution of the local authority asking the Board to put in force any specified Part or section of the Act which the local authority desire to have applied to their district, and in the case of a rural district council should state whether the application relates to the whole district, or to specified contributory places in it. A copy of the resolution, certified

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by the clerk, should be forwarded to the Board, and at the same time they should be furnished with a statutory declaration to be made by the clerk, verifying the fact of the issue of the necessary advertisements, and having copies of the newspapers in which the advertisements were published annexed to it as exhibits.

"The Board think that it will be found convenient if before a local authority publish any advertisement or make any formal application for an Order under s. 3 they forward to the Board drafts of the proposed advertisement and resolution. These should be accompanied by a statement setting out as regards each Part or each section of the Act to which the proposal relates the grounds upon which it is made. A list of any local Acts in force in the district and of any Provisional Orders altering such Acts should also be supplied, and if any of them contain provisions bearing on the subject-matter of any Part or section included in the proposed application, a copy of the local Act or Order should be forwarded, and a reference should be given to the provisions in it which are in question. If there is no local Act in force, this should be stated. This procedure will enable the Board to consider the proposal before any advertisement is issued, and, if necessary, to make suggestions for its amendment."

(3) Any such Order may specify conditions subject to which any Part of any section of this Act shall be in force in the district or contributory place, and where, in the opinion of the Local Government Board, the circumstances so require, any such Order may, in relation to that district or contributory place, declare any Part or any section of this Act to be in force subject to such necessary adaptations as are specified in the Order.

A statement of the effect of each Order specifying conditions or adaptations as aforesaid shall be published in the London Gazette as well as in any other manner directed by the Local Government Board.

(4) In regard to Part VII. (Police), Part VIII. (Fire Brigade), and Part IX. (Sky Signs) of this Act, the Secretary of State shall be deemed to be substituted in this section for the Local Government Board.

Expenses of local authority.

4. All expenses incurred or payable by a local authority in the execution of this Act and not otherwise provided for may be charged and defrayed in the case of an urban sanitary authority or urban district council, as the case may be, as part of the expenses incurred by them in the execution of the Public Health Acts and in the case of a rural district council shall subject to any power of the Local Government Board under any Act to order the contrary, be charged and defrayed as a part of their general expenses under the Public Health Acts.

As to the expenses of an urban sanitary authority and urban district council, see the P. H. A., 1875, ss. 207—228, *ante*, pp. 469—510. As to the expenses of rural district councils, see *ibid.*, ss. 229—232, *ante*, pp. 510—520. As to the power of the Ministry of Health to order expenses to be "special," see *ibid.*, s. 229, the P. H. A., 1890, s. 49, and the L. G. A., 1894, s. 29 (b), referred to in note (*e*) at p. 512, *ante*.

Enquiries by Local Government Board.

5.—(1) The Local Government Board may direct any enquiries to be held by their inspectors which they may deem necessary in regard to the exercise of any powers conferred upon them under this Act, and the inspectors of the Local Government Board shall for the purposes of any such enquiry have all such powers as they have for the purposes of enquiries directed by that Board under the Public Health Act, 1875 (*a*).

(*a*) See the P. H. A., 1875, s. 296, *ante*, p. 629, and notes thereunder.

(2) The local authority shall pay to the Local Government Board any expenses incurred by that Board in relation to any enquiries referred to in this section, including the expenses of any witnesses summoned by the inspector holding the enquiry, and a sum to be fixed by that Board not exceeding three guineas a day for the services of such inspector.

(3) The Secretary of State may order that a local enquiry be held in regard to the exercise of any powers conferred on him under this Act. The person holding any such enquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local enquiry shall be paid by the local authority.

The Ministry of Health do not nor does the Secretary of State as a rule direct local inquiries before deciding upon applications for the powers of this Act.

Legal proceedings.

6. Offences under this Act or under any byelaw (*a*) made under the powers of this Act or under the powers of the Public Health Act, 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts (*b*).

(*a*) Doubt has at times been expressed whether a penalty under a byelaw is a penalty "under" the Act, which gave power to make the byelaw. See note (*b*), p. 441, *ante*, where it is submitted that it is. Section 6 removes this doubt in cases within its terms.

(*b*) See the following sections of the P. H. A., 1875, relating to the matters here mentioned: s. 251, *ante*, p. 551 (see also the notes under the repealed s. 252, *ante*, p. 558); ss. 253—255, *ante*, pp. 559—563; ss. 257—260, *ante*, pp. 568—581; and s. 262, *ante*, p. 582.

Appeals to quarter sessions, etc.

7.—(1) Except where this Act otherwise expressly provides (*a*) any person aggrieved—

(a) By any order, judgment, determination, or requirement of a local authority under this Act;

(b) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act;

(c) By any conviction or order of a court of summary jurisdiction under any provision of this Act;

may appeal, in manner provided by the Summary Jurisdiction Acts (*b*), to a court of quarter sessions.

A similar enactment is to be found in s. 7 of the P. H. A., 1890, s. 7. See that section and the cases cited in the notes thereto, *ante*, p. 823.

The cases in which an appeal will lie under this provision are indicated in the notes to the several sections.

(*a*) Sections 42, 48, *post*, pp. 1046, 1049, appear to make express provision otherwise. See the notes under those sections.

(*b*) The provisions of the Summary Jurisdiction Acts relating to appeals will be found in the notes to s. 269 of the P. H. A., 1875, *ante*, p. 602.

(2) Where any person deems himself aggrieved by the decision of

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the local authority in any case in which the local authority, under this Act, are empowered to recover in a summary manner any expenses incurred by them, or to declare the expenses to be private improvement expenses, section two hundred and sixty-eight of the Public Health Act, 1875 (*a*), shall apply as it applies to cases under that Act, and sub-section (1) of this section shall not apply in any such case, whether arising under the Public Health Act, 1875, or under this Act; but nothing in this sub-section shall extend to any case in which an appeal to a court of summary jurisdiction in relation to any requirement of a local authority, or to any such expenses, is expressly authorised by this Act (*b*).

See the very similar provision in the P. H. A., 1890, s. 7 (2), p. 824, *ante*. The same difficulties appear to arise in construing this sub-section, and also the further difficulty of attaching an intelligible meaning to the words "whether arising under the P. H. A., 1875, or under this Act." In *R.* v. *Recorder of Belfast*, [1919] 2 I. R. 171, it was held that the word "decision" in this sub-section must bear the same interpretation as in s. 268 of the Public Health Act, 1875.

(*a*) See this section and the notes thereunder, *ante*, p. 595.

(*b*) Section 42, *post*, p. 1046, and s. 48, *post*, p. 1049, expressly authorise appeals to a court of summary jurisdiction.

More than one sum in one summons.

8. Any information, complaint, warrant or summons made or issued for the purpose of this Act or of the Public Health Acts may contain in the body thereof or in a Schedule thereto several sums.

This section is identical in terms with s. 8 of the P. H. A., 1890. See the note under that section at p. 824, *ante*.

Byelaws.

9. All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*a*), and any enactment amended or extended by those sections shall apply to all byelaws from time to time made by a local authority under the provisions of this Act, provided that the Secretary of State shall be the confirming authority for byelaws made under Part VII. (Police) of this Act.

(*a*) See these sections and the notes thereunder, *ante*, pp. 433—445.

Compensation, how determined.

10. Where any compensation, costs, damages, or expenses is or are by this Act directed to be paid, and the method for determining the amount thereof is not otherwise provided for, such amount shall in case of dispute be ascertained in the manner provided by the Public Health Acts.

See the P. H. A., 1875, ss. 179—181, and notes thereunder, and see also *ibid.*, s. 308, and notes thereunder.

Powers of Act cumulative.

11. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed (*a*).

Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, but no person shall be liable, except in the case of a daily penalty (*b*), to more than one penalty in respect of the same offence. Section 11.

(*a*) See the P. H. A., 1875, s. 341, *ante*, p. 666, and notes thereunder. Section 11 must be read subject to the latter part of s. 3 (1), *ante*, p. 1021, under which powers under a local Act may be put an end to.

(*b*) See the definition of "daily penalty" in s. 13, *infra*.

12. Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing herein contained authorises any local authority to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay, or estuary, or any land, hereditaments, subjects, or right of whatsoever description belonging to his Majesty in right of his Crown, and under the management of the Commissioners of Woods or of the Board of Trade respectively, without the consent in writing of the Commissioners of Woods or the Board of Trade, as the case may be, on behalf of his Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorised to give). Crown rights.

13. In this Act, if not inconsistent with the context— Interpretation.

The expression "local authority" means an urban sanitary authority, an urban district council, or a rural district council:

The expression "district of the local authority" means an urban sanitary district, an urban district, or a rural district:

By the P. H. A., 1875, s. 6, urban sanitary districts were of three kinds: (1) municipal boroughs; (2) Improvement Act districts; and (3) local government districts, the urban sanitary authorities being respectively the borough council, the improvement commissioners, and the local board. By the L. G. A., 1894, s. 21 (1), urban sanitary authorities were to be called *urban district councils*, and their districts were to be called *urban districts*, but nothing in the section was to alter the style or title of the corporation or council of a borough. By s. 21 (3) the expression "district council" was to include the council of every urban district, whether a borough or not, and the expression "county district" was to include every urban district, whether a borough or not. The L. G. A., 1888, created *county* boroughs, and it is clear that in such a borough the mayor, aldermen, and burgesses acting through the council were, as in other boroughs, the *urban sanitary authority*, and their district an *urban sanitary district*, under the P. H. A., 1875; but it is not clear how far a county borough is an *urban district*, and the council thereof an *urban district council* under the L. G. A., 1894. Section 21 of that Act, is contained in Part II. of the Act, and s. 35 enacts that Part II., save as specially provided by the Act, shall not apply to a county borough. The terms *district council* and *urban district* are used in other parts of the Act, *e.g.*, in s. 62, and in *Kirkdale Burial Board* v. *Liverpool Corporation*, *ante*, p. 977, it was held that the area of a county borough was an *urban district* within the meaning of that section. In order, therefore, that this Act should embrace county boroughs, it was possibly not sufficient to make use of the expressions *urban district council* and *urban district*, and the expressions *urban sanitary authority* and *urban sanitary district* were used, these expressions clearly including the council of a county borough and its district.

The expression "daily penalty" means a penalty for each day on which an offence is continued after conviction therefor:

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The expressions "lands" (*a*), "premises" (*b*), "owner" (*c*), "street" (*d*), "house" (*e*), "drain" (*f*), and "sewer" (*g*) have respectively the same meaning as in the Public Health Acts:

The expressions "clerk," "medical officer," "surveyor," and "inspector of nuisances" mean the clerk, medical officer of health, surveyor, and inspector of nuisances respectively of the district of the local authority:

The expression "dairy" includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied or in which milk is kept for the purposes of sale within (unless otherwise expressed) the district of the local authority:

The expression "dairyman" includes any cowkeeper, purveyor of milk, or occupier of a dairy within (unless otherwise expressed) the district of the local authority (*h*):

The expression "infectious disease" means any infectious disease to which the Infectious Disease (Notification) Act, 1889, for the time being applies within the district of the local authority;

The expressions "the commencement of this Part" and "the commencement of this section" used in relation to any part or section of this Act mean respectively the date at which, by an Order made by the Local Government Board, or by the Secretary of State as the case may be, in pursuance of this Act, and subject to any conditions or adaptations specified in that Order, the Part or section is declared to be in force:

Other expressions to which a special meaning is assigned by the Public Health Act, 1875, have respectively the same meaning in this Act as they have in that Act.

(*a*) See *ante*, p. 7.
(*b*) See *ante*, p. 7.
(*c*) See *ante*, p. 8.
(*d*) See *ante*, p. 15.
(*e*) See *ante*, p. 20.
(*f*) See *ante*, p. 24.
(*g*) See *ante*, p. 26.

Further by s. 2 (1), *ante*, p. 1020, the Act is to be construed as one with the Public Health Acts.

(*h*) See as to this definition, *Southwell* v. *Lewis* (1881), 45 J. P. 206, and *Umfreville* v. *London C. C.* (1896), 66 L. J. Q. B. 177; 61 J. P. 84.

See also the definition in the Milk and Dairies (Consolidation) Act, 1915, 5 & 6 Geo. 5, c. 66, s. 19, *post*, Vol. II.

14. [*Application of Act to Ireland.*]

PART II.

STREETS AND BUILDINGS.

Deposit of plan to be of no effect after certain intervals.

15. (*a*) The deposit of any plans or sections of any street or building, in pursuance of any byelaw in force in the district, may, by notice in writing (*b*) to the person by whom the plans or sections have been deposited, be declared by the local authority to be of no effect if the work to which the plans or sections relate is not commenced (*c*)—

As to plans and sections deposited before the commencement of this section (*d*), within three years from that date;

As to plans and sections deposited on or after the commencement of this section (*d*), within three years of the deposit of the plans and sections.

When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced.

The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building in relation to which plans and sections have been deposited before the commencement of this section (*d*), but the laying out of which street or erection of which building shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited subsequent to the commencement of this section (*d*).

(*a*) Where this section has been applied in any district by an Order of the Ministry of Health (and it is understood that an Order is readily granted, even for rural districts, if building byelaws are in force) the authority may, if the prescribed notice be duly given, secure a fresh deposit of plans and sections after the prescribed period. It is not clear whether there will be a right of appeal under s. 7, *ante*, p. 1023, against a "declaration."

(*b*) As to notices and service thereof, see the P. H. A., 1875, ss. 266, 267, *ante*, p. 593.

(*c*) On the question whether work to which plans relate has been commenced, see *White* v. *Sunderland Corporation* and *Harrogate Corporation* v. *Dickinson*, *ante*, p. 351.

(*d*) As to the term "commencement of this section," see s. 13, *ante*, p. 1026.

As to plans deposited with local authority.

16. The local authority may retain any drawings, plans, elevations, sections, specifications, and written particulars, descriptions or details, deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any byelaw thereunder.

This section only becomes operative in a district when applied by an Order of the Ministry of Health. It extends only to drawings, plans, etc., *approved* by the authority. It is understood that an order is readily granted.

Power to vary position or direction and to fix beginning and end of new streets.

17.—(1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street, or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

This section only becomes operative when applied to a district by an Order of the Ministry of Health. When so applied the powers of an authority will be greatly

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increased, for the powers which may be obtained by means of byelaws made under the P. H. A., 1875, s. 157, *ante*, p. 327, extend only to the level, width, and construction of new streets. An order under this section might perhaps have obviated the difficulty experienced by the authority in *Kirby* v. *Paignton U. D. C.*, p. 291, *ante*.

It is understood that the powers of the section are readily granted, at any rate to urban authorities.

Sub-section (2) imposes an important limitation upon the exercise of the powers conferred by sub-s. (1). See also sub-s. (4), which requires an authority to pay compensation to any person injuriously affected by the exercise of their powers under the section.

Any owner aggrieved by an order of an authority made under this section may appeal to quarter sessions: see s. 7, *ante*, p. 1023.

(2) The powers of the local authority under this section shall not be exercisable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds (*a*), and to a daily penalty (*b*) not exceeding forty shillings.

(*a*) As to recovery, see s. 6, *ante*, p. 1023, and the note thereto. As to appeal, see s. 7, p. 1023, *ante*.

(*b*) See for the definition of this term, s. 13, *ante*, p. 1025.

(4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

The amount of such compensation will be ascertained in the manner provided by the P. H. A., 1875, ss. 179—181, 308. See s. 10, *ante*, p. 1024.

Crossing for cattle, etc. over footways.

18. The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway, be allowed by the local authority subject to the following conditions (that is to say):

(a) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access;

(b) When the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the

reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority ; Section 18.

(c) After the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large.

This section only becomes operative when applied to a district by an Order of the Ministry of Health. It is understood that the powers are readily granted to urban authorities. The meaning of the section is not clear. At common law the owner of premises abutting upon a highway is entitled to access to such highway at any point where his premises are in contact with it (see *St. Mary, Newington (Vestry of)* v. *Jacobs*, *ante*, p. 300, and cases cited therewith). If a frontager owns half the width of the highway, he is entitled to exercise this right to the extent of opening a new cartway across a pavement on to the roadway beyond it so long as there is no unreasonable interference with the public enjoyment of the highway (*St. Mary, Newington (Vestry of)* v. *Jacobs*, *supra*), and apparently he may do so even if he does not own any part of the highway (*Rowley* v. *Tottenham U. D. C.*, [1914] A. C. 95 ; 78 J. P. 97). On the section being applied in any district, the question may, therefore, arise, " Will it limit this common law right of access ? " In *Rowley* v. *Tottenham U. D. C.*, *supra*, where the local Act contained a similar section, the M.R. said that such section seemed to recognise, and at the same time to regulate, the right to cross a kerbed footpath. If it be the true view that s. 18, *supra*, limits the common law right of access, it would seem that, until a new means of access had been provided in accordance with the section, anybody who in an urban district drove a vehicle across a pavement and injured it would be liable to a penalty under the latter part of s. 149 of the P. H. A., 1875. The section in the Tottenham Act imposed liability to a penalty for driving a vehicle across a footway (whether or not injury was caused thereby) until a communication in accordance with the section had been provided. To this extent the section was dissimilar to s. 18 in the text.

If a local authority seek to impose conditions which a frontager deems to be unreasonable, he may appeal to quarter sessions. See s. 7, *ante*, p. 1023.

19. (*a*).—(1) Where repairs are required (*b*) in the case of any street, not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require (*c*) the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice. As to urgent repairs to private streets.

(*a*) This section only becomes operative in a district when applied thereto by an Order of the M. of H. Its object is apparently to enable an authority to effect temporary repairs to a street when in their opinion the time has not arrived for its being properly made up under the P. H. A., 1875, s. 150, or the alternative provisions in the Private Street Works Act, 1892. It will be observed, however, that under sub-s. (4), *infra*, the owners of the lands and premises in the street can perhaps in some cases by means of a counter-notice force the hands of the authority and compel the *making up* of the street.

Difficulty must, however, arise in applying the section. In a rural district, for instance, its application involves a contradiction. The intention of its framers was apparently to limit its operation to a street which is not ripe for making up. As to such a street, however, a rural authority will not possess, and would probably find a difficulty in obtaining, urban powers in view of the practice of the Ministry of Health (see notes to the P. H. A., 1875, s. 150, at p. 287, *ante*, and to the Private Street Works Act, 1892, s. 4, *ante*, p. 872) ; and, if they have not obtained such powers, the provision in sub-s. (4) as to a counter-notice cannot be operative. Again, in a

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case where it is disputed that a particular street is a highway repairable by the inhabitants at large, when and how is the dispute to be determined? There is no provision for the settlement of such a dispute as in the Private Street Works Act, 1892, s. 7; presumably, the matter will be one for the justices when, after the money has been spent, proceedings are taken for its recovery.

The difficulty is apparently recognised by the Ministry of Health, for, although they have declared the section to be in force in a number of urban districts, they have adopted the practice of referring rural district councils who apply for an Order to their existing powers under the Highway Acts and under s. 25 (2) of the L. G. A., 1894, and of stating that a special case must be made out with regard to a particular street or road before an application can be further entertained.

(*b*) The question whether work required to be done amounts to "repairs" will be one of fact. See *Ballard* v. *Wandsworth Borough Council* (1906), 70 J. P. 331; 95 L. T. 118, decided on the somewhat similarly worded s. 3 of the Metropolis Management Amendment Act, 1890. In *R.* v. *Recorder of Belfast*, [1919] 2 I. R. 171, it was held that an appeal lies to quarter sessions against a requirement under this sub-section.

(*c*) When an owner is called upon under the next sub-section to repay to the authority the expenses (or his share thereof) incurred by them, he can appeal to the Ministry of Health.

(2) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt (*a*), the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting.

(*a*) See the P. H. A., 1875, s. 251, *ante*, p. 551, and note (*b*) thereunder as to the recovery of civil debts. As to appeal, see note (*c*), *supra*.

(3) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises.

(4) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the local authority to proceed, in relation to the street, under section one hundred and fifty of the Public Health Act, 1875, or, if the Private Street Works Act, 1892, is in force in the district, under that Act, the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable.

See the notes under sub-s. (1), *supra*. The authority of a district in which the Private Street Works Act, 1892, had been adopted, and to which this section had been applied, served notice to repair a road under s. 19 (1) on the persons whom they understood to be the owners of the adjoining premises. The notice recited that the road was not a highway repairable by the inhabitants at large, but in fact there was along the middle of the road a footpath which was so repairable. The majority of

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the owners served a counter-notice requiring the authority to proceed under the Act of 1892. The authority approved a provisional apportionment under that Act, and some of the owners served notice of objection on the ground that the works were unreasonable and too costly. The authority then withdrew their original notice, being satisfied that it would be unwise to make up the road in a permanent manner as damage would be done to it by building operations. It also appeared that some of the owners of adjoining premises had not been served with the original notice, and no notice had been affixed to the land. On an application for a *mandamus* requiring the authority to proceed under the Act of 1892, it was held that in view of all the legal questions raised the rule ought not to be made absolute; and the court doubted whether service of a counter-notice under s. 19 (4) does more than require the authority to proceed under one or other of the sections mentioned if they see fit to proceed at all (*R.* v. *Epsom U. D. C.* (1912), 76 J. P. 389).

Where in consequence of a counter-notice a street is made up, the authority cannot exercise a discretion as to taking it over such as is permitted by the P. H. A., 1875, s. 152, *ante*, p. 319; the P. H. A., 1890, s. 41, *ante*, p. 855; and the Private Street Works Act, 1892, s. 19, *ante*, p. 886. The sub-section corresponds with s. 20 of the last-mentioned Act, *ante*, p. 886, but under s. 20 *all* the various works must have been done, whereas under the text it would appear to be sufficient if such works only be done as are for the time being *necessary*.

Quære, whether s. 7, *ante*, p. 1023, would enable owners to appeal against a "declaration."

Recovery of damages caused to footways by excavations.

20. If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto, the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury.

In an urban district streets repairable by the inhabitants at large are vested in the council, who have, in respect of the surface of a street, and of so much of the actual soil as may be necessary for its preservation as a road, the same rights of action in respect of trespass, and of a nuisance damaging their property, as a private owner would have. See *Wednesbury Corporation* v. *Lodge Holes Colliery Co., Limited*, *Cavan C. C.* v. *Kane*, *ante*, p. 278. If s. 20 be applied to the district by an Order of the M. of H. (and it is understood that an Order is readily obtained), they will be able to take summary proceedings to recover damages caused to footways by excavations or other works on lands adjoining the street. This is an addition to their power to take summary proceedings in respect of injuries to pavements, etc. under the P. H. A., 1875, s. 149, *ante*, p. 273.

In rural districts such councils as have not had conferred upon them the powers of the P. H. A., 1875, s. 149, have no proprietary right over the surface of a street, and they do not possess the power conferred on an urban council of taking summary proceedings in connection with injuries thereto. The text, therefore, when it is applied in such a rural district, will confer upon the council an entirely new remedy.

As to recovery of the expenses and appeal, see ss. 6, 7, *ante*, p. 1023.

Power to alter names of streets.

21. The local authority may, with the consent of two-thirds in number and value of the ratepayers in any street, alter the name of such street or any part of such street. The local authority may cause the name of any street or of any part of any street to be painted or otherwise marked on a conspicuous part of any building or other erection.

Where this section is applied by an Order of the Ministry of Health to an urban district, it will supplement the Towns Improvement Clauses Act, 1847, s. 64 (in App. I., *post*, Vol. II.), incorporated by the P. H. A., 1875, s. 160, *ante*, p. 363, which confers the power of naming a street upon urban authorities. It might also be

Note to Section 21.

applied to rural districts; but the practice of the Ministry in such cases is understood to be to confine it to parishes in which s. 64 of the Act of 1847 is in force.

Semble, an aggrieved person might appeal under s. 7 (1), *ante*, p. 1023.

There is no statutory authority for numbering houses at the public expense.

Any person who shall wilfully and without the consent of the local authority, obliterate, deface, obscure, remove, or alter any such name, shall be liable to a penalty not exceeding forty shillings.

As to the recovery of this penalty and appeals, see ss. 6, 7, *ante*, p. 1023.

Buildings at corner of streets.

22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine, and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation.

This section only becomes operative in a district when applied thereto by an Order of the Ministry of Health; and it is understood that powers under it are not granted unless special grounds are shown. The amount of compensation will be ascertained in the manner provided by the Public Health Acts. See s. 10, *ante*, p. 1024, and the note thereunder.

See s. 33, *post*, p. 1041, as to the buildings of railway and other companies.

An owner aggrieved by any requirement under the section might appeal to quarter sessions. See s. 7, *ante*, p. 1023.

What to be deemed new buildings.

23. For the purposes of this Act and the Public Health Acts, and any byelaws made thereunder, each of the following operations, namely:

(a) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey;

(b) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only;

(c) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house;

(d) The making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only; and

(e) The roofing or covering over of an open space between walls or buildings;

shall be deemed to be the erection of a new building.

This section on being applied to a district by an Order of the Ministry of Health amends the P. H. A., 1875, s. 159, which is set out *ante*, p. 361. The effect of the section is that such of the building byelaws in force in the district as may be applicable will apply where any of the works enumerated in the section are contemplated,

and plans must be submitted and the work executed in accordance with the byelaws accordingly. New byelaws may also be made to cover the operations described in the section. **Note to Section 23.**

It is understood that many urban councils have obtained the power, and that it has also been applied to rural districts in which building byelaws are in force.

For decisions bearing upon the construction and effect of the section, see notes to the P. H. A., 1875, ss. 157, 159, pp. 328, 361, *ante*. It was provided by a local Act that the making of an addition or projection should be deemed the erection of a new building. T. had a glass conservatory built over a brick scullery, and took away the glass and raised the scullery to the height of the conservatory, making it a room added to the house. It was held that the Justices were wrong in holding that because the new room occupied the same space as the glass conservatory, it was not therefore a new building (*Meadows* v. *Taylor* (1890), 24 Q. B. D. 717 ; 54 J. P. 757). A local Act provided that the conversion of one dwelling-house into two or more, and the reconversion into a dwelling-house of a building discontinued as a dwelling-house should be deemed to be the erection of a new dwelling-house. A block of three shops with dwelling rooms over each was converted into one shop in 1892. The upper part of the whole block was occupied as one dwelling-house from 1900 to 1903. In 1903 the shop was again divided into three shops, and the upper part correspondingly divided into three dwelling-houses. It was held that the alteration of the upper part into three dwellings, and its occupation as such, amounted to the erection of a new building and the occupation of a new dwelling-house within the meaning of the Act and the byelaw (*Hall* v. *Eastbourne Corporation* (1905), 69 J. P. 369). A man did work on an old railway carriage placed in a field, converting it into a dwelling-house, but leaving untouched the main portion of the shell. It was held that he had erected a new building (*Hanrahan* v. *Leigh-on-Sea U. D. C.*, [1909] 2 K. B. 257 ; 73 J. P. 308). The conversion without any structural alteration of a harness room into a living room was held to amount to the conversion into a dwelling-house of a building not originally constructed for human habitation (*Harding* v. *Larne U. D. C.* (1911), 45 Ir. L. T. 182). See also *Morgan* v. *Kenyon* (1913), 110 L. T. 197 ; 78 J. P. 66, a case decided with reference to a local Act which provided that the conversion of a dwelling-house into any other building not intended for human habitation shall be deemed to be the erection of a new building (see the facts of this case fully set out at p. 363, *ante*).

By s. 21 of the Liverpool Improvement Act, 1882, "the division or conversion into more than one dwelling-house of any building originally constructed as one dwelling-house only shall be deemed . . . to be the erection of a new dwelling-house or dwelling-houses, and . . . the corporation shall determine which (if any) one of the houses formed out of the previously existing house shall be the old or original dwelling-house." By s. 37, if default in complying with the building regulations is made by the builder, the surveyor may give him notice of such default, and if the default is not begun to be remedied within forty-eight hours the builder may be summoned before a court of summary jurisdiction and ordered to remedy the default. By the Liverpool byelaws with respect to new buildings, every new dwelling-house must have a certain open space at the rear. The respondents deposited with the surveyor for Liverpool a plan showing a proposal to convert a dwelling-house, which had not the required open space at the rear, into three flats capable of being used as separate residences, and commenced the work before the health committee had expressed approval or disapproval of the plan. Subsequently the committee disapproved of the plan, but the respondents proceeded with the work and completed it. A notice was served on the respondents under s. 37, but it was not complied with, and summonses were issued against them under that section. The corporation had not determined which (if any) of the houses formed out of the previously existing house was to be regarded as the old or original dwelling-house :—*Held*, that as the plan had been disapproved, it was not a condition precedent to proceedings under s. 37 that the Corporation should have determined which of the houses formed out of the previously existing house was to be regarded as the old or original dwelling-house (*Alexander* v. *Tracy* (1915), 79 J. P. 458).

The appellants pulled down part of a very old inn, including certain outer walls, but left the rest standing. They gave notice and deposited plans showing their intention to erect a new part on the old part pulled down, but the notice and plans

Note to Section 23.

did not extend to the whole building. It was held (overruling *Leonard* v. *Hoare*, [1914] 2 K. B. 798 ; 78 J. P. 287) that on the true construction of the above section only such part of a building as had been pulled down to be re-erected was to be deemed a new building, and that the appellants had therefore complied with the bye-laws (*R.* v. *Foots Cray U. D. C.* (1915), 85 L. J. K. B. 191 ; 79 J. P. 521). The plaintiffs, governors of a school, made an addition to their school building which consisted in part of an addition to the front of the building of a projection three stories high. The defendants threatened to pull down the addition on the ground that it was a new building by virtue of the provisions in the text, and had not an open space in the rear as required by the byelaws relating to new buildings. It was held that the byelaw was unreasonable and bad, as it was impossible to provide an open space at the rear of a new building consisting of an addition to an existing building (*Repton School Governors* v. *Repton R. D. C.*, [1918] 2 K. B. 133 ; 82 J. P. 257).

Byelaws as to height of chimneys.

24. Section one hundred and fifty-seven of the Public Health Act, 1875, shall be extended so as to empower the local authority to make byelaws—

with respect to the height of chimneys of buildings and with respect to the height of buildings ; and

with respect to the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories.

Section one hundred and fifty-eight of the Public Health Act, 1875, shall also be in force in every district in which this section is in force.

See the P. H. A., 1875, ss. 157, 158, *ante*, pp. 327, 353 ; the former had already been extended by the P. H. A., 1890, s. 23, p. 839, *ante*.

Any byelaws made under s. 24 (when applied to a district by Order of the Ministry of Health) must be confirmed by the Ministry : see s. 9, *ante*, p. 1024, and note thereto.

For an exemption of buildings of railway companies and others, see s. 33, *post*, p. 1041.

It is understood that the Ministry of Health readily grant this power, even to rural district councils, when s. 157 of the Act of 1875 is in force in their area.

Yards to be paved, etc.

25. If any yard in connection with, and exclusively belonging to, a dwelling-house shall not be so formed, flagged, asphalted, or paved, or shall not be provided with such works on, above, or below the surface of the yard, as to allow of the effectual drainage of the subsoil or surface of the yard by safe and suitable means to a proper outfall, the local authority may, by notice in writing, require the owner of the dwelling-house, within twenty-one days after the service of the notice, to execute all such works as are necessary for the effectual drainage of the subsoil or surface of the yard to a proper outfall.

If, within the said period of twenty-one days, the owner has failed to complete the execution of the works specified in the notice, the local authority may execute the works, and may recover from the owner in a summary manner as a civil debt the expenses incurred by the local authority in the execution of the works.

Byelaws with respect to the paving of yards and open spaces in connection with dwelling-houses may be made under the P. H. A., 1890, s. 23, *ante*, p. 839. This section when applied to a district by an Order of the Ministry of Health, will give to the authority power to secure that yards shall be properly paved and drained. Any byelaws on the subject will be virtually superseded. In fact, the Order putting this section in force generally provides that the power of making and enforcing such byelaws shall cease to be exercised. A question may arise under the section as to

how far repeated requirements may be made. See cases in notes to the P. H. A., 1875, s. 150, at pp. 294—296, *ante*, and *cf. Harrison* v. *Owner of New Street Mews*, [1906] 1 K. B. 703; 70 J. P. 355. **Note to Section 25.**

When applying for the powers of this section the facts as to existing byelaws in the district should be stated, and if there are byelaws a copy should be forwarded.

It would seem that an owner aggrieved by the authority's requirements might appeal against them to quarter sessions. See s. 7, *ante*, and note (*b*) to s. 19 (1).

Entrances to courts, etc., not to be closed.

26. After the commencement of this section the entrances to any court shall not, except with the consent of the local authority, be closed or narrowed or otherwise altered or affected by any permanent structure so as to impede the free circulation of air, and the height of any such entrance shall not, except with that consent, be lowered. The consent of the local authority under this section may be given, subject to compliance with such conditions as the local authority by their consent prescribe, with respect to the formation or provision of any other sufficient opening or means of access, or with respect to the provision of other sufficient means of securing free circulation of air throughout the court.

Nothing in this section shall have effect in relation to any court which by reason of its situation, use, architectural features, or other characteristics is, either wholly or in part, necessary for or ancillary to the ornament or amenity of any lands or premises.

Any person offending against this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

This section only becomes operative in a district when applied by an Order of the Ministry of Health. The Ministry will require to know whether there are any cases in which it appears likely that action under the section will be needed. In most cases some "adaptation" is required.

Any person aggrieved by a withholding of consent under the section may appeal to quarter sessions under s. 7, *ante*, p. 1023. As to the recovery of the penalty imposed by the section, see s. 6, *ante*, p. 1023.

As to temporary buildings.

27.—(1) Before any person erects or sets up a temporary building (*a*) he shall apply to the local authority for permission so to do.

The application shall be accompanied by a plan and sections of the proposed building drawn to a scale of not less than one inch to every eight feet, and a block plan, drawn to a convenient scale, showing the intended situation and surroundings of the proposed building, together with a specification describing the materials proposed to be used in the construction of the building, and the purpose for which the building is intended.

(2) The local authority shall, within one month (*b*) after the delivery of the plans and sections and specification, signify in writing (*c*) their approval or disapproval of the building to the person proposing to erect or set up the building (*d*).

(3) The local authority may attach to their approval any condition which they deem proper with regard to the sanitary arrangements of the building, the ingress thereto and the egress therefrom, protection against fire, and the period during which the building shall be allowed to stand (*e*).

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(4) If any such building is begun, erected, or set up without such application accompanied by such plan, sections, and specification as this section requires, or after the disapproval of the local authority or before the expiration of one month without their approval, or is in any respect not in conformity with any condition attached by the local authority to their approval, the person who began, erected, or set up the building, or, if any such building is not removed within the period allowed by the local authority, the owner of the building (*f*) shall for every such offence be liable to a penalty not exceeding forty shillings (*g*), and to a daily penalty (*h*) not exceeding the like amount; and the local authority may cause the building to be pulled down or removed (*i*), and any expense incurred by them in and about the pulling down or removal of the building may, at their discretion, be recovered summarily as a civil debt (*k*) from the owner of the building or from the person erecting or setting up the building (*kk*).

(5) Where any such building is pulled down or removed by the local authority under the powers of this section the local authority may sell the materials or any part of the materials, and shall apply the proceeds of the sale in or towards payment of the costs and expenses incurred by them in relation to the pulling down or removal of the building, and shall pay the balance to the owner of the building.

(6) The following buildings shall be exempt from the operation of this section:

(a) Any building expressly exempt from the operation of the Public Health Acts or the byelaws made under those Acts and in force for the time being within the district (*l*);

(b) Any building erected or set up for the purpose of protecting or of preventing the acquisition of rights to light;

(c) Any temporary building set up as part of the plant to be used in or about or in connection with the construction, alteration, or repair of any building or other work; but so far as regards only so much of this section as relates to plans, sections, and specifications (*m*).

This section only becomes operative in a district when applied thereto by an Order of the Ministry of Health. Its provisions correspond to those contained in Part VII. of the London Building Act, 1894.

A great number of urban authorities, and also some rural authorities who have building byelaws, have been successful in obtaining the powers. The Order generally provides that the section shall not apply to temporary buildings erected or set up by the Territorial Army.

As to the law respecting temporary structures apart from this section, see *ante*, pp. 342, 343, and see *Whitehorn* v. *Smelt*, there cited, for a decision as to what can be a "building" at all within the meaning of the words "temporary building" as here used.

(*a*) See sub-s. (6) as to the buildings exempt from this section.

(*b*) This means a calendar month (52 & 53 Vict. c. 63, s. 3).

(*c*) See, as to authentication of the notice, the P. H. A., 1875, s. 266, *ante*, p. 593.

(*d*) Although by sub-s. (1) the permission of the authority is required for the erection of a temporary building, failure to disapprove of the plans would probably debar the authority from afterwards complaining. See sub-s. (4), *infra*, and *Clarke* v. *Bloomfield* (1885), 1 T. L. R. 323. An appeal to quarter sessions against a determination of the authority will lie under s. 7, *ante*, p. 1023.

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(*e*) This provision obviates a difficulty which has at times arisen when an authority have in the absence of express provision allowing them to do so, assented to some proposal subject to conditions: see, *e.g.*, *Parsons* v. *Timewell* (1879), 44 J. P. 296. Non-compliance with any condition is provided for by the next sub-section.

(*f*) This need not necessarily be the person who erected the building.

(*g*) As to the recovery of this penalty, see s. 6, *ante*, p. 1023.

(*h*) See the definition of "daily penalty" in s. 13, *ante*, p. 1025.

(*i*) Notice must be given to the person in default, and an opportunity given to him to be heard before the authority demolish the building. See *Cooper* v. *Wandsworth District Board of Works*, and cases cited therewith, *ante*, p. 356, and *Andrews* v. *Wirrall R. D. C.*, *infra*.

(*k*) See note (*b*) under the P. H. A., 1875, s. 251, *ante*, p. 551, as to the summary recovery of civil debts.

(*kk*) The local authority may justify the pulling down of a temporary building under this section though it may be a new building within the meaning of the Public Health Act, 1875, and the byelaws made under s. 157 of that Act (*Andrews* v. *Wirrall R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257).

(*l*) The buildings of railway companies used for the purposes of the railways under any Act of Parliament were by the P. H. A., 1875, s. 157, *ante*, p. 327, exempted from the provisions of that section as to the making of byelaws. There is in s. 33 of this Act, *post*, p. 1041, a more limited exemption of buildings of railway companies, *i.e.*, dwelling-houses are not exempted. That section, however, exempts also the buildings (other than dwelling-houses) of certain public bodies.

(*m*) *I.e.*, application must, under sub-s. (1), be made for permission to erect it.

Removal of materials in streets.

28. The local authority may remove, appropriate, use, and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street, unless the owners of buildings and lands in such street, within forty-eight hours after notice so to do served on them by the surveyor, remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health Act, 1875, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

When this section has been applied to a district the powers of the authority in connection with the making up of private streets will be increased. Unless the owners wish to retain them, the authority may use old materials in making up the street or elsewhere, or may dispose thereof. The reasonable value is to be allowed, and in case of dispute such value will be ascertained in manner provided by the P. H. A., 1875, s. 308, *ante*, p. 642.

Deposit of building materials or excavations not to be made without consent.

29. It shall not be lawful for any person without the consent of the local authority in writing first obtained to lay any building materials, rubbish, or other thing, or make any excavation on or in any street repairable by the inhabitants at large, and when with such consent any person lays any building materials, rubbish, or other thing, or makes any excavation on or in any street, he shall, at his own expense, cause the same to be sufficiently fenced and a sufficient light to be fixed in a proper place on or near the same and to be continued every night from sunset to sunrise, and shall remove such materials, rubbish, or thing or

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fill up such excavation (as the case may be) when required by the local authority: and, if any person fails to comply in any respect with the requirements of this enactment, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the local authority may remove any such materials, rubbish, or thing, or fill up such excavation (as the case may be), and recover the expenses from the offender summarily as a civil debt.

This section (on being applied to a district) will supplement the provisions of the Towns Improvement Clauses Act, 1847, s. 81 (in App. I., *post*, Vol. II.), which as regards urban districts is incorporated by the P. H. A., 1875, s. 160, *ante*, p. 363. It enables an authority to remove materials, etc. or fill up excavations and recover the expenses. It is understood that the Ministry of Health readily grant these powers.

As to the recovery of penalties, see s. 6, *ante*, p. 1023. As to the recovery of civil debts, see note (*b*) under the P. H. A., 1875, s. 251, *ante*, p. 551.

See also as to the displacement or taking up of streets in urban districts the P. H. A., 1875, s. 149, *ante*, p. 273.

As to the right of appeal, see s. 7, *ante*, p. 1023.

Dangerous places to be repaired or enclosed.

30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely):

(1) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure, or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to the persons lawfully using the street or footpath, the local authority may, by notice in writing served upon the owner, require him, within the period specified in the notice and hereinafter in this section referred to as the "prescribed period," to repair, remove, protect, or enclose the same so as to prevent any danger therefrom:

(2) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

See s. 33, *post*, p. 1041, as to the buildings (other than a dwelling-house) of railway and other companies.

This section only becomes operative in a district when applied thereto by an Order of the Ministry of Health. In connection with an application for the powers of this section, the Ministry will doubtless require to know whether there are in fact dangerous places in the district. Many councils, both urban and rural, have obtained the requisite order. The Ministry have stated that as a general rule they do not consider it desirable that the section should apply to the reconstruction and repair of retaining walls. It is therefore the practice to insert a condition in the Order excepting from the operation of the section any wall or structure in so far as the same is used either for the support of any street or public footpath repairable by the inhabitants at large, or for the protection of any street or public footpath from damage or obstruction by reason of the surface of the street or footpath being above or below the level of the surface of the adjoining land, unless the wall or other structure was built after the street or footpath became a highway repairable by the inhabitants at large by or at the expense of a person other than the highway authority responsible for the repair of the street or footpath.

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In urban districts local authorities already possess certain powers of dealing with buildings, walls, or attachments thereto, which are ruinous and dangerous to the public or adjoining occupiers: see the Towns Improvement Clauses Act, 1847, ss. 75—78, as incorporated with the P. H. A., 1875, by *ibid.*, s. 160, *ante*, p. 363. By the Towns Improvement Clauses Act, 1847, s. 83 (also incorporated by s. 160), an urban council are directed to cause to be repaired, protected or enclosed, any building or hole or any other place near any street which is dangerous to passengers along any street, and the expenses of such repair, etc. are made recoverable as damages. See also the power to place fences alongside streets for the safety of foot passengers given by the P. H. A., 1875, s. 149, *ante*, p. 273. These provisions do not apply in a rural district unless urban powers in respect thereof have been conferred upon the rural council by an Order of the L. G. B. or the Ministry of Health. See also the provisions of the Quarry (Fencing) Act, 1887, the Metalliferous Mines Regulation Act, 1872, and the Coal Mines Regulation Act, 1911 (in App. I., *post*, Vol. II.), which are of general application.

It will be seen that where s. 30 is applied to a district previously existing powers as to dangerous buildings or places will be largely supplemented. See also s. 31, *infra*.

A person aggrieved by any action taken by an authority under s. 30 may appeal, but whether to quarter sessions or to the L. G. B. is not clear. See s. 7 and notes thereto, *ante*, p. 1023.

B. owned a narrow strip of land from fourteen to fifty feet in width between a street and a disused chalk pit. There was no fence between the street and the strip or between the strip and the pit. B. did not own the pit. Originally the edge of the pit was outside B.'s land, but in course of years some feet of his land had, from natural causes, slipped down into the pit, and the court found that the existence of the pit unfenced was a source of danger to persons lawfully using the street. It was held that the pit was "in a situation fronting, adjoining or abutting on" the street, and that the plaintiffs were justified in requiring B. to fence the edge of the pit on his land (*Carshalton U. D. C.* v. *Burrage*, [1911] 2 Ch. 133; 75 J. P. 250).

The appellants owned certain parts of the bank of the Mersey over which an ancient footpath ran, but were under no obligation to repair the footpath *ratione tenuræ*. Portions of the bank were washed away, and portions of the footpath fell into the river, and further portions were threatening to fall, and the way was thereby rendered dangerous to persons lawfully using the same. The local authority called upon the appellants under this section to repair and protect the bank so as to prevent danger therefrom. It was held that the section did not apply to such a case (*Cheshire Lines Committee* v. *Heaton Norris Urban District Council*, [1913] 1 K. B. 325; 76 J. P. 462). This case was distinguished from one which arose under a local Act which referred (*inter alia*) to any "ground" deemed by the surveyor to be dangerous (*Gaby* v. *Palmer* (1916), 85 L. J. K. B. 1240; 80 J. P. 212).

As to the possible liability of a council who leave unguarded a ravine by the side of a street which they make up, see *McClelland* v. *Manchester Corporation*, on p. 257, *ante*.

As to accidents to persons and children in public parks or on land belonging to an authority, see cases on pp. 373, 589, *ante*.

Fencing lands adjoining streets.

31. If any land (other than land forming part of any common) adjoining any street is allowed to remain unfenced or if the fences of any such land are allowed to be or remain out of repair, and such land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public, the Local Government Board on the application of the local authority may by Order empower the local authority to proceed under this section, and, in that case, at any time after the expiration of fourteen days from the service upon the owner or occupier of notice in writing by the local authority requiring the land to be fenced or any fence of the land to be

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repaired, the local authority may cause the land to be fenced or may cause the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt.

In so far as it makes provision for removing a source of danger to passengers, this section (on being applied to a district) will supplement the provisions of the last section. The other powers conferred by it were novel so far as general legislation is concerned. Two Orders of the Ministry of Health are necessary. In addition to the Order declaring the section to be in force in the district, a second Order must be obtained (by subsequent application) empowering the authority to proceed under the section as regards a particular piece of land.

Here again it would seem that there would be a right of appeal to sessions against the "requirement." See s. 7, *ante*, and note (*b*) to s. 19 (1).

The section has been declared to be in force in many districts, but it does not follow that the second order will be granted as a matter of course. In fact the Ministry require, when action is proposed, to be furnished with full particulars as to the pieces of land which have become dangerous or a nuisance, with the names of the owners, and a copy of any correspondence which has taken place, and with a plan and photographs of the spot. A local inquiry is then directed before any decision is given.

A local Act provided that "If any land . . . adjoining any street is allowed to remain unfenced . . . and such land is in the opinion of the council owing to the absence . . . of any such fence a source of danger to passengers or is used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," the council might fence the land and recover the cost. It was held that, if a piece of land is not provided with a fence reasonably effective for the purpose of preventing persons from going on to it, it is "unfenced," and also that upon the true construction of the section the question whether the land is "used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," is a question for the justices (*Upjohn* v. *Willesden U. D. C.*, [1914] 2 K. B. 85; 78 J. P. 54). The present section does not contain the words "in the opinion of the council." A local Act provided that if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of any such land should when required by the corporation and to their satisfaction fence off the land from the street and should afterwards keep such fence in repair. It was held that the Act did not apply to the retaining walls of an old turnpike road, but only to new streets where there were no fences and which, in the opinion of the corporation, were dangerous to the public (*Rotherham* (*Mayor, etc. of*) v. *Fullerton* (1884), 50 L. T. 364).

It may be mentioned that an owner or occupier of land is not under any obligation towards the public using a road to fence the road from his land so as to prevent harmless animals, like sheep, from straying upon it (*Heath's Garage, Ltd.* v. *Hodges*, [1916] 2 K. B. 370; 80 J. P. 321).

Hoards to be securely erected.

32.—(1) A person shall not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the local authority.

(2) If any person acts in contravention of this section he shall be liable, in respect of each offence, to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

This section only becomes operative in a district when applied thereto by an Order of the Ministry of Health, who, however, readily comply with applications. Its provisions are not limited to hoardings erected during building operations, but apply to hoardings erected for any purpose, and are therefore of wider application than the Towns Improvement Clauses Act, 1847, s. 80, or the P. H. A., 1890, s. 34.

Apparently an appeal will lie to quarter sessions (s. 7, *ante*).

In *Barnett* v. *Covell* (1904), 68 J. P. 93; 90 L. T. 29, under a similar clause in a

local Act, the court refused to interfere with a finding that a hoarding in a field on a hedge bank parallel to the street, and only three feet from it, did not "abut" on the street. This case was distinguished in *Rockleys, Ltd.* v. *Pritchard* (1910), 74 J. P. 11; 101 L. T. 575, where a hoarding stood back 10 feet from the street, but there was no intervening fence; there the court approved a finding that it was either "in or abutting on or adjoining" the street, as it had become for the time being the *de facto* boundary of the street. It was again distinguished in *Stockport Corporation* v. *Rollinson* (1910), 74 J. P. 236; 102 L. T. 567; there R. erected two connected hoardings on private land at an angle made by two streets; one was seven inches from the edge of the street and six inches from an iron fence, which, however, did not obscure the view of posters on the hoarding; the other was twenty-five inches from the edge of the street and eleven inches from the parapet wall of a bridge bounding the street. On an information for erecting the hoardings "in" the street without consent, the justices held that as no part of the hoardings extended up to or upon the highway they were bound by the decision in *Barnett* v. *Covell* to hold that they were not "in" the street. The court sent the case back with an intimation that on the facts the hoardings were clearly "in" the street. See further as to "abutting" or "adjoining," cases cited on pp. 298 *et seq.*, *ante*.

Note to Section 32.

33. Nothing in this Part or in any byelaws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

Exemption of buildings of railway companies and others.

See the somewhat similar proviso at the end of s. 157 of the P. H. A., 1875, *ante*, p. 327, and note thereon at p. 352, *ante*, and note (*l*) under s. 27, *ante*, p. 1037.

PART III.

SANITARY PROVISIONS.

34. Section forty-one of the Public Health Act, 1875, shall have effect as if for the words "(but not otherwise)" there were substituted the words "or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health."

Extension of s. 41 of 38 & 39 Vict. c. 55.

The powers of this section are readily granted by the Ministry of Health to both urban and rural councils.

See s. 41 of the P. H. A., 1875, and the notes thereto, *ante*, p. 105. It was held in *Wood Green U. D. C.* v. *Joseph*, *ante*, p. 105, that the written application required by s. 41 might proceed from the surveyor or inspector of nuisances. Where s. 34, *supra*, is applied to a district it will no longer be necessary for the officers of the authority to state that the drain, etc. is a nuisance or injurious to health; it will be sufficient to state facts which give rise to suspicion.

35. For the purposes of the Public Health Act, 1875—

(1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein

As to nuisances.

Section 35.

liable to contamination, causing or likely to cause risk to health ;

(2) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building ; and

(3) Any deposit of material in or on any building or land which shall cause damp in such building or in an adjoining building so as to be dangerous or injurious to health ;

shall be deemed to be a nuisance within the meaning of the said Act.

This section will (in districts to which it is applied) extend the classes of nuisances specified in the P. H. A., 1875, s. 91, as nuisances liable to be dealt with summarily in manner provided by that Act. For the provisions of the Act of 1875 as to nuisances, see ss. 91—111, *ante*, pp. 165—211.

The section will usually require "adaptation," and in the case of rural districts it would seem sufficient if sub-ss. (2) and (3) were confined to buildings occupied by human beings. In a case in which the Ministry of Health granted powers under the section the adaptation took the following form :—" This section, so far as it relates to the deposit of material, shall have effect subject to the first proviso to s. 91 of the P. H. A., 1875. Byelaws made in pursuance of s. 16 of the L. G. A., 1888, for the prevention and suppression of nuisances shall not, in relation to any subject-matter of this section, be of any force or effect within the district."

Rain-water pipes not to be used as soil pipes.

36. No pipe used for the carrying off of rain water from any roof shall be used for the purpose of carrying off the soil or drainage from any privy or water-closet. Any person who shall offend against this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

This section only becomes operative when applied to a district by an Order of the Ministry of Health under s. 3, *ante*, p. 1021. It will usually need "adaptation." As to appeal, see s. 7, *ante*.

Water or stack pipes not to be used as ventilating shafts.

37. No water-pipe, stack-pipe, or down-spout in existence at the commencement of this section, used for conveying surface water from any premises, shall be used or be permitted to serve or to act as a ventilating shaft to any drain. Any person who shall offend against this section after fourteen days from the service upon him by the local authority of notice of such offence shall be liable to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.

The note to s. 36 applies to this section also.

Local authority may require old drains to be laid open for examination by surveyor before communicating with sewers.

38. Before any drain existing at the commencement of this section and then not communicating with any sewer of the local authority shall be made to communicate with any sewer of the local authority, the local authority may require the same to be laid open for examination by the surveyor, and no such communication shall be made until the surveyor shall certify that such drain may be properly made to communicate with such sewer.

Under the P. H. A., 1875, s. 21, *ante*, p. 78, the owner or occupier of any premises within the district of a local authority is, subject to the conditions therein contained,

Note to Section 38.

entitled to cause his drains to empty into the sewers of that authority, and by s. 22, *ante*, p. 81, the owner or occupier of any premises without the district of a local authority may on the terms and conditions therein mentioned cause any . . . drain from such premises to communicate with any sewer of the local authority. The text imposes a new condition or term as to connecting to a sewer a drain existing at the "commencement of the section" (*i.e.*, the date at which, by the Order, the section is declared to be in force, see s. 13, *ante*, p. 1025).

It is understood that the Ministry of Health readily grant the powers even to rural councils when cause is shown. The adaptation of this section usually takes the following form:—"Nothing in this section shall prejudicially affect any power or right exercisable by or attaching to an owner or occupier of premises by virtue of s. 22 of the P. H. A., 1875, or of s. 18 of the P. H. A., 1890."

An owner might appeal under s. 7, *ante*, p. 1023, against the requirement to lay open the drain. If the requirement is not appealed against (or is upheld on appeal) and the surveyor after examination refuses to certify for the communication, an owner must apparently acquiesce, for no right of appeal is given against such refusal to certify.

Provision and conversion of closet accommodation.

39 (*a*).—(1) In this section unless the context otherwise requires—

The expression "closet accommodation" includes a receptacle for human excreta, together with the structure comprising such receptacle and the fittings and apparatus connected therewith:

The expression "pail closet" means closet accommodation including a moveable receptacle for human excreta;

The expression "water-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of a fresh water supply, and having proper communication with a sewer;

The expression "slop-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of slops or waste liquids of the household or rain water, and having proper communication with a sewer;

The expression "a sufficient water supply and sewer" means a water supply and a sewer which are sufficient and reasonably available for use in, or in connection with, the efficient flushing and cleansing of, and the efficient removal of excreta from such number of proper and sufficient water-closets and slop-closets, or from such one or more of either class of closet as, in pursuance of this section, may be required to be provided in any particular case.

(2) Within one month after the deposit of any plan by a person intending to erect a new building, the local authority, where there are a sufficient water supply and sewer, may by written notice to that person require the new building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet, as the circumstances of the case may render necessary.

Any person who fails to comply with any requirement of the local authority under this sub-section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3) If, on the report of the medical officer or the surveyor or the inspector of nuisances, the local authority are satisfied that sufficient

Section 39.

closet accommodation has not been provided at or in connection with a building, and the case is not one in which sufficient closet accommodation can be provided by the alteration of any existing closet accommodation in pursuance of this section, the local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of the building require the building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet, as the circumstances of the case may render necessary.

If the owner or owners of the building fail to comply with any requirement of the local authority under this sub-section, the local authority may, at the expiration of a time which shall be specified in the notice and shall be not less than fourteen days after the service of the notice, do the work required by the notice, and may recover summarily as a civil debt from the owner or owners the expenses incurred by the local authority in so doing.

(4) The local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of a building require any existing closet accommodation (other than a water-closet or a slop-closet) provided at or in connection with the building to be altered, so as to be converted into a water-closet or slop-closet (*b*).

If the owner or owners of the building fail to comply with any requirement of the local authority under this sub-section, the local authority may, at the expiration of a time which shall be specified in the notice and shall not be less than fourteen days after the service of the notice, do the work required by the notice.

Where in pursuance of this sub-section any work of alteration is done by the local authority in default of the owner or owners in respect of a pail-closet, the expenses of the work shall be borne by the local authority, and where in pursuance of this sub-section any work of alteration is done by the local authority in default of the owner or owners in respect of any existing closet accommodation other than a pail-closet, one half of the expenses of the work shall be borne by the local authority, and the remainder of the said expenses shall be borne by the owner or owners and shall be recoverable summarily as a civil debt.

Every notice in pursuance of this sub-section shall state the effect of the sub-section.

(5) Nothing in this section shall have effect with respect to a slop-closet, unless or until the Local Government Board have been satisfied by the local authority, and have by order declared that the circumstances of the district of the local authority are such as to render it necessary or expedient that this section shall have effect with respect to a slop-closet.

Any order in pursuance of this sub-section shall be published in such manner as the Local Government Board direct.

Sections 39—42 must be treated as a whole. Probably few rural councils will apply to the L. G. B. for powers under them.

(*a*) Where this section is applied to a district the difficulty experienced in taking action under the P. H. A., 1875, s. 36, illustrated by the case of *Wood* v. *Widnes Corporation*, *ante*, p. 97, may be to some extent removed. See also the notes and

cases on pp. 97, 98, *ante*. It will be observed that it gives extensive powers as to the provision of closet accommodation in new and in existing buildings, and as to the conversion of existing earth-closets or privies into water-closets or slop-closets. Sections 40—42, *infra*, contain provisions supplemental to this section, as to the recovery of the expenses of work for the common benefit of two or more buildings belonging to different owners, for the declaration as private improvement expenses of expenses recoverable from owners, for entry on premises by authorised persons for the purposes of the section and for an appeal to a court of summary jurisdiction by a person who is aggrieved by a requirement of the authority, or who objects to the reasonableness of expenses recoverable from him under the section.

Note to Section 39.

In connection with any application by an authority for the powers of this and the three following sections, the Ministry of Health require to know the special grounds upon which the application rests, and what are the arrangements with regard to the sewerage and the water supply of the district.

When considerable expenditure is involved by action under this section, the district council may contract a loan with the sanction of the Ministry of Health.

It should be noted, however, that s. 39 is defective. When the local authority carry out the work of conversion in default of the owner it is made obligatory on them to contribute half of the expense in the case of a closet other than a pail-closet, and the whole expense in the case of a pail-closet. If an owner complies with the notice, or converts voluntarily, the local authority cannot contribute to the cost, so that the section actually encourages an owner to make default! Then with regard to the special provision in sub-s. (5) as to slop-closets, it is doubtful whether, in view of sub-s. (4), any general action could be taken for the conversion of this type of closet even if the M. of H. issued an order as provided by sub-s. (5). As a fact, no instance of such an order is known to the editors.

(*b*) In *Carlton Main Colliery Co., Ltd.* v. *Hemsworth R. D. C.*, [1922] 1 Ch. 522, the point was raised that if a local authority have a scheme for conversion of privies into water-closets they must act under this section and not under s. 36 of the 1875 Act, but the court held that each case must be dealt with on its merits.

Payment for works of common benefit.

40.—(1) Where under section thirty-nine of this Act the local authority do any work for the common benefit of two or more buildings belonging to different owners, the expenses, which under that section are recoverable by the local authority from the owners, shall be paid by the owners of those buildings in such proportions as shall be determined by the surveyor, or in case of dispute by a petty sessional court.

Expenses.

(2) Any moneys expended by the local authority for the purposes of section thirty-nine of this Act shall, so far as they are not recoverable from the owner or owners, be part of the expenses of the local authority in the execution of the Public Health Act, 1875.

Private improvement expenses.

(3) The local authority may by order declare any expenses incurred by them under section thirty-nine of this Act, which are recoverable summarily as a civil debt from the owner or owners, to be expenses to which the provisions of section two hundred and fifty-seven (*a*) of the Public Health Act, 1875, shall apply, and thereupon those provisions shall apply, with the necessary modifications, as if they were herein re-enacted and in terms made applicable to the said expenses.

(*a*) See this section, *ante*, p. 568, and the notes thereunder.

Entry on premises.

41. Any person duly authorised in writing by the local authority shall, on production of his authorisation, be admitted into any premises for the purposes of section thirty-nine of this Act, and the provisions of sections one hundred and two and one hundred and three of the Public Health Act, 1875, shall, with the necessary modifications, apply to his admission.

See the sections referred to, *ante*, pp. 188, 189.

Section 42. Appeals.

42.—(1) Where any person deems himself aggrieved by any requirement of the local authority under section thirty-nine of this Act, or objects to the reasonableness of any expenses wholly or partially recoverable from him under that section, that person may, within fourteen days after the service of notice of the requirement or of a demand for payment of the expenses, appeal to a court of summary jurisdiction, and the court may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive on all parties (*a*) :

Provided nevertheless that the right of appeal, subsequent to the service of a demand for payment, shall be restricted to the ground of the reasonableness of the amount of the expenses, and the appellant shall be precluded from raising at that stage any other question.

(*a*) These words appear to bar the right of appeal to sessions which would otherwise be given by s. 7, *ante*, p. 1023. Nor can the court state a special case. See *Westminster Corporation* v. *Gordon Hotels, Ltd.*, [1908] A. C. 142 ; 72 J. P. 201 ; *cf. Wills & Sons* v. *McSherry* (No. 2), [1914] 1 K. B. 616 ; 78 J. P. 120.

The procedure on appeal to justices is by way of complaint for an order, and the Summary Jurisdiction Acts are to apply to all such proceedings. See the Summary Jurisdiction Rules, 1915, No. 58. See the Local Government Annual Volume, 1914—15, p. 556. And see as to the construction and application of this rule, *Edelsten* v. *London C. C.*, [1918] 1 K. B. 81 ; 81 J. P. 294.

(2) Pending the decision of the court upon the appeal the local authority shall not be empowered to execute any works to which the notice relates, and any proceeding which may have been commenced for the recovery of the expenses shall be stayed.

Local authority may require removal or alteration of urinals.

43.—(1) If any urinal or other sanitary convenience opening on any street (whether erected before or after the commencement of this section) is so placed or constructed as to be a nuisance or offensive to public decency, the local authority, by notice in writing, may require the owner to remove it within a reasonable time fixed by the local authority.

(2) If the owner fails to comply with the notice, he shall be liable to a penalty not exceeding twenty shillings and to a daily penalty not exceeding ten shillings.

The marginal note refers to "removal *or alteration*" whereas the section refers only to a removal. A marginal note, however, does not form part of a statute. See *Claydon* v. *Green* (1868), L. R. 3 C. P. 511, *per* WILLES, J., at p. 521

The Ministry of Health before entertaining an application for the powers of this section require to know whether there are any cases to which they would apply.

"Sanitary convenience" includes "urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience." See the P. H. A., 1890, s. 11 (3), *ante*, p. 826.

Where Part III. of the P. H. A., 1890, has been adopted by an urban authority, s. 20 of that Act (see p. 836, *ante*) enables them to prohibit or impose conditions upon the erection of public sanitary conveniences in or accessible from any street, with a saving in favour of railway companies. By the application to their district of this section, the powers of an authority over objectionable urinals or sanitary conveniences will be greatly increased.

If an owner be aggrieved by any requirement of the authority he may appeal to quarter sessions under s. 7, *ante*, p. 1023.

44.—(1) Where any inn, publichouse, beerhouse, eating-house, refreshment-house, or place of public entertainment, whether built before or after the commencement of this section, has no urinal belonging or attached thereto, the local authority may, by notice in writing, require the owner of the premises to provide and maintain thereon one or more proper and sufficient urinals in a suitable position. Urinals to be attached to refreshment houses, etc.

(2) If the owner fails within a reasonable time to comply with a notice under this section, he shall be liable in respect of each offence to a penalty not exceeding twenty shillings and to a daily penalty not exceeding ten shillings.

This section only becomes operative in a district when applied thereto by an Order of the Ministry of Health.

As to the authentication and service of notices, see the P. H. A., 1875, ss. 266, 267, *ante*, p. 593.

An owner aggrieved by the requirement of the authority may appeal to quarter sessions under s. 7, *ante*, p. 1023.

45.—(1) If the medical officer, surveyor, or inspector of nuisances reports to the local authority that he has reasonable grounds for believing that any drains of any building are so defective as to be injurious or dangerous to health, the local authority may authorise their medical officer, surveyor, or inspector of nuisances to apply the smoke or coloured water test, or other similar test (not including a test by water under pressure), to the drains, subject to the condition that either the consent of the owner or occupier of the building must be given to the application of the test, or an order of a court of summary jurisdiction having jurisdiction in the place where the building is situated must be obtained, authorising the application of the test. Testing of drains on report of defects.

Where this section has been applied to a district by an Order of the Ministry of Health, the powers of an authority with respect to the examination of drains under the P. H. A., 1875, s. 41, *ante*, p. 105, will be considerably increased. It is understood that the powers are readily granted to urban councils.

Any person aggrieved by the granting of an order by a court of summary jurisdiction might appeal to quarter sessions under s. 7, *ante*, p. 1023.

(2) If on the application of the test the drains are found to be defective, the local authority may, by notice specifying generally the defect, require the owner of the premises to do all works necessary for remedying it within a reasonable time named in the notice, and if the owner fails so to do the work the local authority may themselves do the work, and the expense of so doing the work may either be recovered from the owner of the building summarily as a civil debt or may be declared by the local authority to be private improvement expenses, and may be recoverable accordingly.

See the notes to the similar provisions in the P. H. A., 1875, s. 41, *ante*, p. 105. It would seem that an appeal will lie to sessions against the authority's requirement under this sub-section. See s. 7, *ante*, and note (*b*) to s. 19 (1).

(3) The owner and occupier of any building shall give all reasonable facilities for the application of any test which has been consented to or authorised in pursuance of this section, and, if the owner or occupier

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fails to do so, he shall be liable in respect of each offence to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.

See as to the recovery of penalties, s. 6, *ante*, p. 1023, and as to the meaning of "daily penalty," s. 13, *ante*, p. 1025. As to appeal, see s. 7 (1), *ante*, p. 1023.

Provision for filling up cesspools, etc.

46. If it shall appear to the local authority by the report of the medical officer, surveyor, or inspector of nuisances that any cesspool or other receptacle used or formerly used as a receptacle for excreta or other obnoxious matter, or for the whole or any part of the drainage of a house, or that any ashpit or any well or disused well belonging to any such house or part of a house is prejudicial to health, or otherwise objectionable for sanitary reasons, and that it is desirable that the same should be filled up or removed, or so altered as to remove any such objection as aforesaid, the local authority may, if they think fit, by notice in writing, require the owner or occupier of such house or part of a house within a reasonable time, to be specified in the notice, to cause such cesspool, receptacle, ashpit, or well to be filled up or removed, and any drain communicating therewith to be effectually disconnected, destroyed, or taken away, or to cause such cesspool, receptacle, ashpit, or well to be so altered as to remove any such objection as aforesaid.

Where it appears that any such cesspool, receptacle, ashpit, or well is used in common by the occupiers of two or more houses, or parts of houses, the notice for filling up or removal of any such cesspool, receptacle, ashpit, or well may be served on any one or more of the owners or occupiers of such houses, and it shall not be necessary to serve such notice on all such owners or occupiers.

If default is made in complying with the requisitions of a notice under this section the local authority may themselves carry out the requisitions, and may recover the expenses incurred by them in so doing from the owners or occupiers in default in a summary manner as a civil debt, or, where the owners are the persons liable, as private improvement expenses are recoverable under the Public Health Acts.

By the P. H. A., 1875, s. 41, *ante*, p. 105, all local authorities are empowered to deal with ashpits and cesspools which are a nuisance or are injurious to health.

Under the P. H. A., 1875, s. 70, *ante*, p. 148, action may be taken by any local authority in regard to any well the water in which is used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, and is so polluted as to be injurious to health.

See also as to the powers of all local authorities in regard to nuisances generally, the P. H. A., 1875, s. 91, *ante*, p. 165, and the notes thereunder.

Where s. 46 is applied by an Order of the M. of H. to a district, the powers of the authority would appear to be increased. The cesspools, etc., need only be "objectionable for sanitary reasons," which is a very elastic expression. All wells are also referred to.

Here again it would seem that an appeal would lie to sessions, and to the M. of H., at different stages (see s. 7, *ante*, and note (*b*) to s. 19 (1)).

Where an authority have themselves carried out the requisitions of their notice they may recover the expenses from either the owner or occupier in default in a summary manner as a civil debt (see hereon note (*b*) to the P. H. A., 1875, s. 251, *ante*, p. 551), or where the owner is the person liable, as private improvement expenses are recoverable under the Public Health Acts: see hereon the P. H. A., 1875, s. 213,

ante, p. 493. There is nothing in the section to indicate when a notice is to be served on the owner and when on the occupier; apparently this is left to the discretion of the authority. **Note to Section 46.**

It is understood that the Ministry of Health readily grant powers under this section.

47. The local authority may provide and maintain in proper and convenient situations sanitary conveniences in or under any street repairable by the inhabitants at large, and may provide and maintain in proper and convenient situations lavatories in or under any such street for the use of the public, and may employ and pay attendants and make reasonable charges for the use of any sanitary conveniences (other than a urinal) or of any lavatory so provided. The local authority may make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same. Public conveniences and lavatories.

The local authority may let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper.

Under the P. H. A., 1875, s. 39, *ante*, p. 102, an urban authority (and also a rural authority who have obtained urban powers under the section) may, if they think fit, provide and maintain, in proper and convenient situations, urinals, water-closets, earth-closets, privies and ashpits, and other similar conveniences for public accommodation. See also *ibid.*, s. 45, *ante*, p. 115, as to the provision of receptacles for deposit of rubbish. It was held that s. 39 did not empower an authority to excavate the soil and erect lavatories below the surface of streets vested in them: see *Tunbridge Wells Corporation* v. *Baird*, *ante*, p. 104. The powers of s. 39 are, however, usually sufficient for the purposes of rural districts.

On the adoption of Part III. of the P. H. A., 1890, s. 20 of that Act empowers urban authorities, as to sanitary conveniences provided and maintained by them for public accommodation, to—(i) Make regulations with respect to the management thereof and make byelaws as to the decent conduct of persons using the same; (ii) Let the same from time to time for any term not exceeding three years at such rent and subject to such conditions as they may think fit; (iii) Charge such fees for the use of any water-closets provided by them as they may think proper.

"Sanitary conveniences" are defined by s. 11 (3) of the last-mentioned Act to include urinals, water-closets, privies, ashpits, and any similar conveniences.

In the case of urban councils their existing powers will be augmented on the application of this section to their districts. They will be enabled to place sanitary conveniences *and lavatories under* streets. The section empowers them to make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same, and also empowers them to let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper. It will be observed that the section extends to lavatories, which are not expressly mentioned in the definition clause (s. 11 (3)) of the Act of 1890, and also that the section gives power to make *byelaws*, not *regulations*. An express power is given to make charges in respect of any sanitary convenience (other than a urinal) or any lavatory. An Order of the Ministry of Health applying the above section to a district may specify any conditions or adaptations

The section does not vest the subsoil of the street in the authority for the purpose of the provision of sanitary conveniences and lavatories, as does the P. H. (London) A., 1891. Consequently, the case of *Tunbridge Wells Corporation* v. *Baird*, *ante*, p. 104, seems to show that the authority must, if required, pay for the use of the subsoil

48. If the local authority are required by the owner or occupier of any premises to remove any trade refuse (*a*) (other than sludge), the Removal of trade refuse.

Section 48. local authority shall do so, and the owner or occupier shall pay to them for doing so a reasonable sum, to be settled in case of dispute by order of a court of summary jurisdiction; and if any question arises in any case as to what is to be considered as trade refuse, that question may be decided on the complaint of either party by a court of summary jurisdiction, whose decision shall be final (*b*).

It is understood that the powers of this section are readily granted to urban authorities; they will not usually be required in rural districts.

(*a*) See as to the meaning of this expression cases on pp. 108—110, *ante*.

(*b*) These words preclude the right of appeal which would otherwise be given by s. 7, *ante*, p. 1023; nor can a special case be stated by the court (see *Westminster Corporation* v. *Gordon Hotels, Ltd.*, *ante*, p. 109); but, *semble*, an appeal will lie as to the reasonableness of the sum fixed.

Summary power to provide sinks and drains for buildings.

49. In addition to all other powers vested in a local authority, the local authority, if it shall appear to them on the report of the surveyor, medical officer, or inspector of nuisances, that any building built before or after the commencement of this section of this Act is not provided with a proper sink or drain or other necessary appliances for carrying off refuse water from such building, may give notice in writing to the owner or occupier of such building requiring him in the manner and within the time to be specified in such notice, not being less than twenty-eight days, to provide such sink, drain, or other appliances. If the owner or occupier makes default in complying with such requirement to the satisfaction of the local authority within the time specified in such notice, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and in case of default the local authority may, if they think fit, themselves provide such sink, drain, or other appliances, and the expenses incurred by them in so doing shall be repaid to them by such owner or occupier, and may be recovered summarily as a civil debt.

Where this section has been applied to a district by an Order of the Ministry of Health (and it is understood that an Order is readily granted to an urban authority), the powers which all local authorities possess under the P. H. A., 1875, s. 23, p. 83, *ante*, will be supplemented. An owner or occupier aggrieved by a requirement made under the section may probably appeal to sessions. See s. 7, *ante*, p. 1023.

As to the difference in the proceedings for recovery of penalties and expenses, see note (*e*) on p. 81, *ante*, and note (*b*) on p. 551, *ante*.

Local authority may provide an ambulance.

50. The local authority may provide and maintain an ambulance for use in any case of accident, or other sudden or urgent disability, together with suitable attendants, and means of traction, and other requisites; and may allow the ambulance to be used by any other local authority or person subject to such terms and conditions as may be agreed upon.

An ambulance for use in cases of infectious disease may be provided under the P. H. A., 1875, s. 123, *ante*, p. 231; see the notes thereto. In districts where it is applied the text allows the provision of one for accident cases.

Power to declare a business to be an offensive business.

51.—(1) The words "any other trade, business, or manufacture, which the local authority declare by order confirmed by the Local Government Board, and published in such manner as the Board direct,

to be an offensive trade," shall be substituted for the words " any other noxious or offensive trade, business, or manufacture," in section one hundred and twelve of the Public Health Act, 1875. Section 51.

See s. 112, *ante*, p. 211, and the notes thereto. It will be observed that according to the decision in *Wanstead L. B.* v. *Hill* and other cases in such notes that s. 112 only extended to trades *ejusdem generis* with the trades specified therein.

Where the present section is applied to a district, the consent of the authority will be required to the establishment of *any* trade, business, or manufacture which the authority declare by Order confirmed by the Ministry of Health, and published as the Ministry direct, to be offensive. But such an Order will not render illegal a business (though of a kind specified in it) which has been lawfully established before the Order comes into operation (*Butchers Hide, etc. Co.* v. *Seacome*, p. 215, *ante*). In such a case, however, byelaws might be made under sub-s. (2), *infra*. The appellant established the trade of a rag and bone dealer in 1908 on premises within an urban district. In 1911 the authority declared the trade of a rag and bone dealer to be an offensive trade. The appellant continued the trade without the consent of the authority till 1918, when he let the premises to a tenant who obtained the consent of the authority and carried on the trade till 1920. The tenant then vacated the premises and the appellant, having resumed possession, proceeded to carry on the trade without consent. It was held that he had not established the business of a rag and bone dealer in 1920, but had only continued an old business (*Mayo* v. *Stazicker*, [1921] 2 K. B. 196; 85 J. P. 141).

The following is an extract from the Memorandum of the L. G. B. prefixed to their latest model byelaws as to offensive trades :—

Memo. of L. G. B. as to offensive trades.

" It will be seen that apart from the last cited enactment [*i.e.*, s. 51 of this Act], a trade, in order to be within the operation of the byelaws which the urban authority are empowered to make, must belong to the class designated ' offensive,' and must have been established with the consent of the authority either before or after the passing of the P. H. A., 1875.

" In ordinary cases there will, of course, be little difficulty in determining whether the circumstances and date of the original establishment of any particular trade are such as to render it subject to the control which the urban authority may exercise by means of their byelaws.

" But in relation to a trade other than those expressly mentioned in section 112 of the Act of 1875, that is to say, the trades of a blood-boiler, bone-boiler, fell-monger, soap-boiler, tallow-melter, and tripe-boiler, the question whether the materials and processes are such as to constitute a ' noxious or offensive trade, business, or manufacture,' is one which will often be found to require careful consideration, and an accurate knowledge of the facts of the case.

" When any such question comes before the urban authority they may be advised to give special heed to the principles which may be deduced from the decisions in *Wanstead L. B.* v. *Hill*, *Cardell* v. *New Quay L. B.*, *Passey* v. *Oxford L. B.*, and *Braintree L. B.* v. *Boyton* (see these cases on p. 213, *ante*).

. . . . . .

" From the decisions and judgments given in the above cited cases it seems to follow that, in seeking to establish an analogy between a particular trade and those specified in s. 112 of the P. H. A., 1875, the urban authority should attach much importance to the identity or similarity of the materials used in its processes. If a trade can be shown to involve the collection of large quantities of animal matter, or of substances which, without anything being done to them, must be or by progress of time must necessarily become a nuisance to the neighbourhood, it is probable that the terms of s. 112 will be found sufficiently comprehensive to include such a trade.

" But in order that a trade may be brought within the operation of that enactment, the urban authority should, in every case, be in a position to adduce adequate testimony in support of their allegation that the trade is noxious or offensive. That the court of summary jurisdiction may be satisfied that the particular trade is noxious or offensive, and that their finding may be supported by the evidence, it is clearly essential that the urban authority should in every case be able to lay

Note to Section 51.

before the court well-ascertained facts as to the processes of the trade, and to show how their results may be noxious or offensive.

"It will be observed that there are two advantages in having section 51 of the Act of 1907 declared to be in force. In the first case the obligation to prove to a court of summary jurisdiction that a particular trade comes within the description of 'any other noxious or offensive trade, business, or manufacture' is removed. In the second place the power to make byelaws is extended to offensive trades which were not established with the consent of the local authority.

"Where a local authority, acting under the powers conferred by the Act of 1907, desire to declare any trades to be 'offensive trades' they should make a declaratory order to that effect and submit it to the Board for confirmation. The Board suggest that the order might conveniently take the form printed below.

"The Board would desire to see any such order in draft before it is formally made, and except in the case of recognised offensive trades they will require to be satisfied that the trades referred to are of such a nature that they may properly be brought within the provisions of the section relating to offensive trades. It is the practice of the Board before confirming any such order to require that it shall have been advertised in one or more local newspapers at least fourteen days before the application for confirmation is made.

"In the present series of model byelaws it will be seen that the Board have included, in addition to the clauses relating to the trades specified in s. 112 of the P. H. A., 1875, byelaws for the regulation of the trades of a blood-drier, a leather-dresser, a tanner, a fat-melter or fat-extractor, a glue-maker, a size-maker, a gut-scraper, a dealer in rags and bones, and a fish frier.

"The Board do not suggest that it will in every case be desirable to adopt the model series in its entirety. Thus where s. 51 of the Act of 1907 is not in force the restricted operation of the earlier statute referred to above must be borne in mind; and where that section is in force the clauses relating to any trade which is not mentioned in any order made under that section or in s. 112 of the P. H. A., 1875, must be omitted."

In a Circular Letter dated October 11th, 1910, the Board pointed out to local authorities who had been invested with the powers of s. 51 of the Act of 1907, that an offensive trade which is not referred to by name in s. 112 of the P. H. A., 1875, and which would, under that Act, have required the consent of the council for its establishment, might now be established without such consent, unless it were specifically declared to be an offensive trade by an order confirmed by the Board under sub-s. (1) of the section.

The Board suggested that the council should consider whether in respect of their district there were any trades, other than those specifically named in s. 112 of the Act of 1875, which it was desirable to deal with by a declaratory order issued under s. 51 of the Act of 1907. The Board would be prepared to entertain an application for the confirmation of such an order, but they would, of course, have to consider any representations which might be made to them on behalf of the trades affected. They suggested that the order should take the form of a declaration under the seal of the council and the Board would be glad to see the order in draft before it was formally made. At the same time they would wish to be furnished as regards any trade included in the order but not dealt with in the model byelaws with respect to offensive trades, with a copy of any representation by the medical officer of health as to the carrying on of the trade in the district, or with a report from that officer giving particulars of the trade and showing the need for greater control over it.

The Board were also of opinion that where byelaws are in force with respect to offensive trades there might be some advantage if, after the declaratory order had been made, the council were to re-enact the byelaws under the somewhat wider powers of s. 51 (2) of the Act of 1907.

A town council proposed to include knackers' yards in an order under s. 112 of the P. H. A., 1875, as amended by s. 51 of this Act. The Board drew their attention to the provisions of the Knackers Acts of 1786 and 1844, and the Cruelty to Animals Act, 1849, as to the licensing of persons keeping houses or places for the slaughtering of horses, to s. 27 of the Local Government Act, 1894, transferring the licensing powers from the quarter sessions to the local authority; and to ss. 125—127 of the Towns Improvement Clauses Act, 1847, as incorporated with the P. H. A., 1875,

providing for the licensing and registration of knackers' yards by the local authority. The Board stated that in their opinion the object in view might be met under these enactments rather than by the proposed procedure. **Note to Section 51.**

In connection with a proposal of an urban district council to treat a manufactory of artificial manure as an " offensive trade " for the purpose of s. 51 of this Act, the Board pointed out that " chemical manure works " were among the works specified in the Alkali, etc., Works Regulation Act, 1906. The " owner " is required by that Act to comply with certain regulations, and in view of this express legislation the Board were not disposed to confirm any order which would render applicable to such a person the provisions of s. 112 of the P. H. A. of 1875.

An application for the powers of s. 51 of this Act cannot, of course, be made by a rural district council unless that council possesses already urban powers as to offensive trades under the Act of 1875, or unless application for those powers is made at the same time.

(2) The local authority may make byelaws with respect to any trade which is an offensive trade under section one hundred and twelve of the Public Health Act, 1875, as amended by this Act, whether established before or after the commencement of this Act, in order to prevent or diminish any noxious or injurious effects of the trade.

See preceding note. Under the P. H. A., 1875, s. 113, *ante*, p. 215, an authority can only make byelaws with respect to offensive trades established with their consent, *i.e.*, trades established since the P. H. A., 1848, or the P. H. A., 1875, came into force in their district. Where this section is applied that limitation is removed. The byelaws must, however, be limited to trades which are offensive under the P. H. A., 1875, s. 112, as amended by this section.

PART IV. (*a*).

INFECTIOUS DISEASES.

(*a*) It is understood that the powers of ss. 52—57 (inclusive) are readily granted unconditionally by the Ministry of Health to urban and rural councils.

52.—(1) If any person knows that he is suffering from an infectious disease, he shall not engage in any occupation or carry on any trade or business unless he can do so without risk of spreading the infectious disease. Infected person not to carry on occupation.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health : see note (*a*), *supra*. The expression " infectious disease " means any infectious disease to which the Infectious Disease (Notification) Act, 1889, for the time being applies within the district, *i.e.*, diseases specified in *ibid.*, s. 6, or to which the Act has been applied by the authority of the district : see s. 13, *ante*, p. 1026.

(2) If any person acts in contravention of this section, he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

As to appeal, see s. 7, *ante*, p. 1023.

53.—(1) If the medical officer certifies to the local authority that any person in the district is suffering from infectious disease which the medical officer has reason to suspect is attributable to milk supplied within the district, the local authority may require the dairyman Power to require dairymen to furnish list of sources of supply.

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supplying the milk to furnish to the medical officer within a reasonable time fixed by them a complete list of all the farms, dairies, or places from which his supply of milk is derived or has been derived during the last six weeks, and, if the supply, or any part of it, is obtained through any other dairyman, may make a similar requisition upon that dairyman.

(2) The local authority shall pay to the dairyman for every list furnished by him under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list.

(3) Every dairyman shall comply with the requisition of the local authority under this section, and, if he fails to do so, shall be liable in respect of each offence to a penalty not exceeding five pounds and a daily penalty not exceeding forty shillings.

This section and the next are among the "enactments saved" by the Milk and Dairies (Consolidation) Act, 1915. See that Act, s. 21 and Sched. V., *post*, Vol. II.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See note (*a*), p. 1053, *ante*. For the meaning of the term "infectious disease" see note under s. 52 (1), *ante*, p. 1053. As to appeal, see s. 7, *ante*, p. 1023.

See as to the existing power of authorities with respect to dairies, the Infectious Disease (Prevention) Act, 1890, s. 4, *ante*, p. 808, and notes thereto. See also s. 54, *infra*, as to notification by dairymen of infectious disease among their servants. For the definitions of "dairy" and "dairyman," see s. 13, p. 1026, *ante*, and cases there referred to.

Dairymen to notify infectious diseases existing among their servants.

54.—(1) Every dairyman supplying milk within the district of the local authority from premises whether within or beyond the district aforesaid shall notify to the medical officer all cases of infectious disease among persons engaged in or in connection with his dairy, as soon as he becomes aware or has reason to suspect that such infectious disease exists.

(2) Any dairyman who shall fail to comply with this section shall for every such offence be liable to a penalty not exceeding forty shillings.

See the note to the preceding section.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See note (*a*) on p. 1053, *ante*. When so applied it will impose a new obligation on dairymen (see definitions of "dairyman" and "dairy" and "infectious disease" in s. 13, *ante*, p. 1026). The existing obligation as to the notification of infectious diseases is contained in the Infectious Disease (Notification) Act, 1889, s. 3, *ante*, p. 798. See also s. 53, *supra*, and the Infectious Disease (Prevention) Act, 1890, s. 4, *ante*, p. 808. As to appeal, see s. 7, *ante*, p. 1023.

Infected clothes not to be sent to laundry.

55.—(1) A person shall not take or send to any public washhouse or to any laundry, for the purpose of being washed, any bedding, clothes, or other things which he knows to have been exposed to infection from any infectious disease, unless they have been disinfected by or to the satisfaction of the local authority or their medical officer, or of a legally qualified medical practitioner, or are sent to a laundry with proper precautions for the purpose of disinfection, with notice that they have been exposed to infection.

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(2) If any person acts in contravention of the foregoing provision of this section he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

(3) The local authority may, on the application of any person, pay the expenses of the disinfection of any such bedding, clothes, or other things, if carried out by them or under their direction.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See note (*a*) on p. 1053, *ante*, and see s. 13, *ante*, p. 1026, as to the meaning of "infectious disease." As to appeal, see s. 7, *ante*, p. 1023.

See as to the existing powers of authorities with reference to infected clothing, the P. H. A., 1875, ss. 120, 121, 122, *ante*, pp. 227—231, and the Infectious Disease (Prevention) Act, 1890, ss. 5, 6, *ante*, pp. 801—813. See also s. 66 of this Act, *post*, p. 1059.

Filthy and dangerous articles to be purified.

56. Where the local authority on the certificate of the medical officer are satisfied that the cleansing, purification, or destruction of any article in a dwelling-house is, by reason of the filthy condition of the article, necessary to prevent injury or to remove or obviate risk of injury to the health of any person in the dwelling-house, the local authority may cause the article to be cleansed, purified, or destroyed at their expense.

Where a person sustains damage in consequence of the exercise by the local authority of their powers under this section, and the condition of the article with respect to which those powers have been exercised is not attributable to his act or default, the local authority shall make reasonable compensation to that person.

This section only becomes operative when applied by an Order of the Ministry of Health. See note (*a*) on p. 1053, *ante*.

See with reference to the cleansing, purifying, and destruction of articles in dwelling-houses which have been exposed to infection, the P. H. A., 1875, ss. 120, 121, 122, *ante*, pp. 227—231; the Infectious Disease (Prevention) Act, 1890, ss. 5, 6, *ante*, pp. 810—813; and s. 66 of this Act, *post*, p. 1059. The provisions of the text are not limited to articles which have been exposed to infection.

Child suffering from infectious disease not to attend school.

57.—(1) No person being the parent or having the care or charge of a child within the district of the local authority who is or has been suffering from infectious disease or has been exposed to infection shall, after a notice from the medical officer that the child is not to be sent to school, permit such child to attend school without having procured from the medical officer a certificate (which shall be granted free of charge upon application) that in his opinion such child may attend without undue risk of communicating such disease to others.

(2) Any person who shall offend against this section shall for every such offence be liable to a penalty not exceeding forty shillings.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See note (*a*), on p. 1053, *ante*, and see s. 13, *ante*, p. 1026, as to the meaning of "infectious disease." As to appeal, see s. 7, *ante*, p. 1023.

No offence will be committed unless the notice referred to in the section has been given. The certificate cannot be given by the patient's doctor unless he happens to be the medical officer. No provision is made for remuneration to the medical officer for the service of notices and the granting of certificates.

Note to Section 57. It will be noticed that the provisions of the section are not confined to public elementary schools, but extend to schools of every description. As to the exclusion of children from school, etc., see a memorandum referred to on p. 811, *ante*.

List of scholars to be furnished where scholar in a school is suffering from an infectious disease.

58.—(1) The principal of a school in which any scholar is suffering from an infectious disease shall, if required by the local authority, furnish to them within a reasonable time fixed by them a complete list of the names and addresses of the scholars in or attending at the school or any specified department thereof other than boarders.

(2) The local authority of the district shall pay to the principal of the school for every list furnished by him under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list.

(3) If the principal of a school fails to comply with any of the provisions of this section he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

(4) In this section the expression "the principal" used in relation to a school means the person in charge of the school, and includes, where the school is divided into departments and there is no single person at the head of the whole school, as respects each department the head of that department.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health; when it is so applied an entirely new obligation is imposed on schoolmasters. Any application to the Ministry should state to what schools in the district, other than public elementary schools, the section would apply.

See s. 13, *ante*, p. 1026, as to the meaning of "infectious disease." As to appeal, see s. 7, *ante*, p. 1023.

Provisions as to library books.

59.—(1) If any person knows that he is suffering from an infectious disease he shall not take any book or use or cause any book to be taken for his use from any public or circulating library.

(2) A person shall not permit any book which has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from an infectious disease.

(3) A person shall not return to any public or circulating library any book which he knows to have been exposed to infection from any infectious disease, or permit any such book which is under his control to be so returned, but shall give notice to the local authority that the book has been so exposed to infection, and the local authority shall cause the book to be disinfected and returned to the library, or to be destroyed.

(4) The local authority shall pay to the proprietor of the library from which the book is procured the value of any book destroyed under the power given by this section.

(5) If any person acts in contravention of or fails to comply with this section, he shall be liable in respect of each offence to a penalty not exceeding forty shillings.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. When it is so applied (and it is understood that Orders are readily granted) a new obligation is imposed on borrowers and users of books

from public or circulating libraries. The adaptation of the section usually takes the following form: "Nothing in this section shall apply to a public or circulating library which is not within the district."

Note to Section 59.

See s. 13, *ante*, p. 1026, as to the meaning of "infectious disease," and see s. 7, *ante*, p. 1023, as to appeal.

Local authority may pay expenses of person in hospital.

60. Nothing in section one hundred and thirty-two of the Public Health Act, 1875, with respect to the recovery of the cost of maintenance in a hospital, shall require the local authority to recover the cost of maintenance from a patient who is not a pauper where the local authority have satisfied themselves that the circumstances of the case are such as to justify the remission of the debt.

It may be doubted whether this section (when applied to a district) will make any practical alteration in the law, for under s. 132 (see note thereto, at p. 245, *ante*), the recovery of expenses is apparently not compulsory. The Ministry of Health appear to readily grant applications for the powers of this section.

Removal of person from infected premises.

61.—(1) The local authority may exercise the powers of section fifteen of the Infectious Disease (Prevention) Act, 1890, whether that section has or has not been adopted in the district, and, where the local authority so determine, those powers may be exercised for providing temporary shelter or house accommodation with any necessary attendants for any person who, in any case to which this section applies, leaves a house after any infectious disease has appeared therein, and the local authority may borrow, subject to the provisions of the Public Health Acts, for the purpose of providing shelter or house accommodation under section fifteen of the Infectious Disease (Prevention) Act, 1890, or under this section.

Where the local authority in pursuance of the aforesaid powers have provided a temporary shelter or house accommodation, they may, on the appearance of any infectious disease in a house, and on the certificate of the medical officer, cause any person who is not himself sick and who consents to leave the house, or whose parent or guardian (where the person is a child) consents to his leaving the house, to be removed therefrom to any such temporary shelter or house accommodation, and in the like case on the like certificate may cause any such person who does not consent to leave the house to be removed therefrom to any such temporary shelter or house accommodation, where two justices, on the application of the local authority and on being satisfied of the necessity of the removal, make an order for the removal, subject to such conditions (if any) as are imposed by the order.

The local authority shall in every case cause the removal to be effected and the conditions of any order to be satisfied without charge to the person removed or to the parent or guardian of that person.

(2) Any person who wilfully disobeys or obstructs the execution of an order under this section shall be liable to a penalty not exceeding five pounds.

(3) For the purpose of this section the word "house" includes any tent, van, shed, or similar structure used for human habitation or any boat lying in any canal or other water within the district of the local authority and used for the like purpose.

Note to Section 61.

Where this section is put in force the authority may exercise the powers of the Infectious Disease (Prevention) Act, 1890, s. 15, without having adopted it. That section enables temporary shelter or house accommodation, with necessary attendants, to be provided free of charge for the members of any family who have been compelled to leave their dwelling for the purpose of enabling the dwelling to be disinfected by the authority. This section extends s. 15 so as to allow the above powers to be exercised in relation to any person who leaves a house after any infectious disease has appeared therein, and widens the meaning of "house" so as to cover any tent, van, shed, or similar structure used for human habitation, or any boat lying in any canal or other water within the district and so used. Powers for the removal of persons to a temporary shelter or house accommodation are also conferred, and an order of justices may be obtained by the authority for the removal of a person without his consent. No charge can be made by the authority for removal. See also the P. H. A., 1875, s. 120, *ante*, p. 227, and notes thereto.

A local inquiry is usually considered necessary by the Ministry of Health before the powers of this section are granted.

Amendment of s. 126 of 38 & 39 Vict. c. 55.

62. Paragraph two of section one hundred and twenty-six of the Public Health Act, 1875 (which imposes a penalty on the exposure of infected persons and things), shall be read as if the words "or causes or permits such sufferer to be so exposed" were added after the word "sufferer."

On this section being applied to a district the effect of the amendment (see s. 126 (2), p. 233, *ante*) will be that a penalty may be imposed upon any one who, being in charge of a person suffering from a "dangerous infectious disorder," causes or permits such sufferer to be exposed, without proper precautions against spreading the disorder, in any street, public place, shop, inn, or public conveyance. The Act does not define "dangerous infectious disorder"; but probably the diseases specifically mentioned in the Infectious Disease (Notification) Act, 1889, s. 6, would be considered to be "dangerous."

It is understood that the powers of this and the three following sections are readily granted by the Ministry of Health to both urban and rural district councils.

Prohibiting conveyance of infected persons in public vehicles.

63. The owner or driver of a public vehicle within the district of the local authority used for the carrying of passengers at separate fares shall not knowingly convey, or any other person shall not knowingly place, in any such public vehicle a person suffering from any infectious disease, or a person suffering from any such disease shall not enter any such vehicle, and every person who shall offend against this section shall for every such offence be liable to a penalty not exceeding forty shillings.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See second note to s. 62, *supra*, and see also the Infectious Disease (Prevention) Act, 1890, s. 11, *ante*, p. 816, and s. 64 of this Act, *infra*. See s. 7, *ante*, p. 1023, as to appeal.

Driver, etc. of infected person to give notice.

64.—(1) If any person suffering from any infectious disease is conveyed in any public vehicle within the district of the local authority, the owner or driver thereof as soon as it comes to his knowledge shall give notice to the medical officer, and shall cause such vehicle to be disinfected, and, if he fails so to do, he shall be liable to a penalty not exceeding five pounds, and the owner or driver of such vehicle shall be entitled to recover in a summary manner from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient

sum to cover any loss and expense incurred by him in connection with such disinfection. Section 64.

(2) It shall be the duty of the local authority when so requested by the owner or driver of such public vehicle to provide for the disinfection of the same free of charge, except in cases where the owner or driver conveyed a person knowing that he was suffering from infectious disease.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health: see second note to s. 62, *ante*. When so applied it will impose an obligation as to notification additional to those imposed by the Infectious Disease (Notification) Act, 1889, s. 3, *ante*, p. 798, and the Infectious Disease (Prevention) Act, 1890, s. 11. See also the P. H. A., 1875, ss. 126, 127, *ante*, pp. 233, 235, and notes thereto. See s. 7, *ante*, p. 1023, as to appeal.

65. Section one hundred and twenty-four of the Public Health Act, 1875, shall extend and apply to all cases of persons suffering from any dangerous infectious disease, and being in or upon any house or premises where such persons cannot be effectually isolated so as to prevent the spread of the disease. Section 124 of 38 & 39 Vict. c. 55, to apply to persons who cannot be isolated.

Where this section is applied to a district (see second note to s. 62, *ante*). Section 124 (see p. 231, *ante*), which provides for the removal to a hospital of any person suffering from any dangerous infectious disorder and without proper lodging or accommodation, or lodged in a room occupied by more than one family, will be extended to all cases of persons so suffering, and being in or upon any house or premises where they cannot be effectually isolated so as to prevent the spread of the disease. The removal must be authorised by an order of a justice unless the person is lodged in a common lodging-house.

66.—(1) If the medical officer, or any other legally qualified medical practitioner certifies that the cleansing and disinfecting of any house, or part of a house, and of any articles therein likely to retain infection, or the destruction of those articles would tend to prevent or check any dangerous infectious disease the local authority shall serve notice on the master, or, where the house or part is unoccupied, on the owner of the house, or part, that the house or part, and any such articles therein, will be cleansed and disinfected, or (as regards the articles) destroyed, by the local authority unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles, or destroy the articles to the satisfaction of the medical officer or of any other legally qualified medical practitioner within a time fixed in the notice. Cleansing and disinfecting of premises, etc.

(2) If either—

(a) Within twenty-four hours from the receipt of the notice the person on whom the notice is served does not inform the local authority as aforesaid; or,

(b) Having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected, or the articles destroyed as aforesaid, within the time fixed in the notice; or

(c) The master or owner without any such notice gives his consent;

the house or part and articles shall be cleansed and disinfected, or the articles destroyed by the officers and at the cost of the local authority under the superintendence of the medical officer.

Section 66.

(3) For the purpose of carrying into effect this section the local authority may enter by day on any premises.

(4) When the local authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of the house, or part of a house, or the owner of the article, for any unnecessary damage thereby caused to the house, part of a house, or article; and when the local authority destroy any article under this section they shall compensate the owner thereof, and the amount of any such compensation shall be recoverable in a summary manner.

(5) The expression "master" means the person in occupation of or having the charge, management, or control of the house or part of a house, and where the house is wholly let out in separate tenements, or is a lodging-house wholly let to lodgers, includes the person receiving the rent payable by the tenants or lodgers, either on his own account or as the agent of another person; and the expression "by day" means during the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. It is an improved version of the Infectious Disease (Prevention) Act, 1890, s. 5, *ante*, p. 810, but will not entirely supersede that section. Thus, s. 5 extends to the cleansing and disinfection of houses, etc. upon the default of the owner and occupier, when this course would tend to prevent or check any infectious disease to which the Act is applied by the authority, and the expenses of the cleansing and disinfection are ordinarily to be recovered from the owner or occupier of the house. This section extends only to the cleansing and disinfection of houses, etc. upon the default of the occupier, when this course would tend to prevent or check any dangerous infectious disease. The expenses are to be defrayed by the authority.

The Ministry may direct a local inquiry before granting powers under this section.

Provision of nursing attendance by local authority.

67.—(1) The local authority may provide nurses for attendance on patients suffering from any infectious disease in their district who, owing to want of accommodation at the hospital or danger of infection, cannot be removed to the hospital, or in cases where removal to the hospital is likely to endanger the patients' health.

(2) The local authority may charge such reasonable sums for the services of nurses provided by them as they think fit.

(3) Nothing in this section shall be deemed to take away or diminish the necessity of providing proper hospital accommodation for persons suffering from infectious disease.

On this section being applied to a district, a new power is conferred on the authority thereof. An application should probably be accompanied by information as to the hospital accommodation provided by the authority, the number of beds, and the number of different diseases for which accommodation is available at one time.

Wake not to be held over body of person dying of infectious disease.

68. It shall not be lawful to hold any wake over the body of any person who has died of infectious disease, and the occupier of any house or premises or part of a house or premises who permits or suffers any such wake to take place in such house or premises, or part of a house or premises, and every person who attends to take part in such wake shall be liable to a penalty not exceeding forty shillings.

This section on being applied to a district creates entirely new offences. A special statement of grounds will probably be required in support of an application for an order.

Note to Section 68.

PART V. (*a*).

COMMON LODGING-HOUSES.

(*a*) No section of this Part of the Act will be operative in a district until applied thereto by an Order of the Ministry of Health. By s. 75 (1), *post*, p. 1063, "at a time not less than one month before the commencement of this Part of this Act the local authority shall give notice of the fact to the keeper of every common lodging-house in their district." It would appear from this provision that the intention of the legislature was that the whole of the sections shall be applied at the same time. It is understood that the powers of ss. 69—75 are readily granted by the Ministry with necessary adaptations.

Discretion as to registration of lodging-house keeper.

69.—(1) The local authority may, at their discretion, refuse to register any person as a common lodging-house keeper, unless they are satisfied of his character and of his fitness for the position.

(2) The registration of a person as a common lodging-house keeper shall, if that person is newly registered after the commencement of this section, remain in force only for such time not exceeding one year as may be fixed by the local authority, but may be renewed from time to time by the local authority (*b*).

Under the P. H. A., 1875, s. 78, *ante*, p. 154, an authority may refuse to register as the keeper of a common lodging-house a person who does not produce the certificate of character therein described, but on such being produced they have no discretion in the matter. On this section becoming operative (by Order of the Ministry of Health), the portion of s. 78 just referred to will be repealed (see s. 75 (2), *post*, p. 1063). It is doubtful if s. 7, *ante*, p. 1023, confers any right of appeal. Note also sub-s. (2) as to the duration of *new* registrations.

(*b*) This is a new provision.

Obligation on common lodging-house keeper to provide for proper control of his house.

70.—(1) Either the keeper of a common lodging-house or a deputy registered under this Act shall manage and control the lodging-house and exercise supervision over those using it, and either the keeper or the deputy so registered shall be and remain at the lodging-house between the hours of nine in the evening and six in the morning of the following day.

(2) If any provision of this section is not complied with in the case of any common lodging-house, the keeper of the house shall, unless he shows to the court that there was a reasonable excuse for the non-compliance, be liable in respect of each offence to a penalty not exceeding forty shillings, and to a daily penalty not exceeding twenty shillings.

See note (*a*), *supra*. The P. H. A., 1875, s. 80, *ante*, p. 156, enables an authority to make byelaws for the well ordering of common lodging-houses; where this section is applied there will be, in addition to any obligation imposed by a byelaw, the express obligation imposed by the text. See s. 7, *ante*, p. 1023, as to appeal.

Deputy lodging-house keepers.

71.—(1) The local authority shall keep a register for the purposes of this section, and shall enter therein the name of any person whose name

Section 71. is submitted to them by a common lodging-house keeper as his deputy, and who is approved by them for the purpose.

(2) The local authority may register more than one deputy for any common lodging-house keeper.

(3) The local authority, if at any time they are of opinion that any person registered as a deputy of a common lodging-house keeper is not a fit person for the purpose, may cancel the registration.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health. See note (*a*) on p. 1061, *ante*. No provision was made in the common lodging-house code in the P. H. A., 1875 (ss. 76—89, *ante*, pp. 151 *et seq.*), for deputy keepers. Section 7, *ante*, p. 1023, may give an appeal against a refusal to approve.

Power of court convicting common lodging-house keeper to cancel registration.

72. Where the keeper of a common lodging-house is convicted of any offence against any provision of the Public Health Acts or this Act relating to common lodging-houses, or of any byelaw made thereunder, the court before whom he is convicted may cancel his registration as a common lodging-house keeper, and he shall cease to be registered accordingly.

Where this section becomes operative (see note (*a*) on p. 1061, *ante*), it will supersede the less stringent section (s. 88, *ante*, p. 160) of the P. H. A., 1875: see s. 75 (2), *post*, p. 1063. See s. 7, *ante*, p. 1023, as to appeal.

Unregistered lodging-house keepers liable to penalties under s. 86 of 38 & 39 Vict. c. 55.

73. If a person keeps a common lodging-house he shall, although he is not registered as a common lodging-house keeper under section seventy-seven of the Public Health Act, 1875, be liable to the penalties imposed under section eighty-six of that Act for the offences named therein.

Quære, whether this section, if applied to a district (see note (*a*), on p. 1061, *ante*) effects any alteration in the law, for it is certainly arguable that unregistered keepers are liable to be convicted under the P. H. A., 1875, s. 86, *ante*, p. 159, for the offences named therein.

Provision of proper sanitary conveniences in a common lodging-house.

74.—(1) Every common lodging-house, whether registered before or after the commencement of this section, shall be provided—

(a) With sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in that house, and also, where persons of both sexes are received in the common lodging-house, with proper separate accommodation for persons of each sex; and

(b) With a water supply laid on sufficient for flushing any water-closets or urinals which are used in the house.

(2) If it appears to the local authority that, in the case of any common lodging-house, default is made in any respect in complying with the provisions of this section, the local authority may, by notice in writing specifying the default, require the keeper of the common lodging-house to remedy the default.

(3) If within twenty-eight days of the notice being served the default is not remedied to the satisfaction of the local authority, they may themselves do the work required to be done, and may recover in a

summary manner from the keeper of the common lodging-house the expenses incurred by them in so doing, or may by order declare these expenses to be private improvement expenses. Section 74.

This section on being applied to a district (see note (*a*) on p. 1061, *ante*), will form a useful supplement to the lodging-house code of the P. H. A., 1875, *ante*, pp. 151, *et seq.*

As to appeal, see s. 7, *ante*, p. 1023, and notes thereto.

75.—(1) At a time not less than one month before the commencement of this Part of this Act the local authority shall give notice of the fact to the keeper of every common lodging-house in their district. Notice of commencement of Part V. and repeal.

See note (*a*) on p. 1061, *ante*, and note to s. 85 on p. 1071, *post*.

(2) On and after the commencement of this Part of this Act section seventy-eight (*a*) from the words "and the local authority may" to the end of the section, and section eighty-eight (*b*) of the Public Health Act, 1875, shall be repealed as far as relates to the district.

(*a*) See note to s. 69, p. 1061, *ante*.

(*b*) See note to s. 72, p. 1062, *ante*.

PART VI.

RECREATION GROUNDS.

It is obviously the intention of the Legislature that this Part of the Act (two sections only) shall be applied as a whole, for s. 77 is supplemental merely to s. 76. Its provisions will not be operative in a district until applied to it by an Order of the Ministry of Health. The Ministry will probably require applications to be supported by information as to the parks and pleasure grounds provided by the council or under their management or control, and as to the particular powers which are considered to be necessary. Many Orders have been issued.

76.—(1) The Local Government Board, for the purposes of this section, may make rules prescribing restrictions or conditions subject to which any powers conferred by the section shall with respect to any area in a public park or pleasure ground be exerciseable in relation to the enclosure or setting apart of the area, or in relation to the use of the area as the site of a building or convenience. Powers as to parks and pleasure grounds.

Subject to the restrictions or conditions prescribed by rules made under this section, the local authority shall, in addition to any powers under any general Act, have the following powers with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—

(a) To enclose during time of frost any part of the park or ground for the purpose of protecting ice for skating, and charge admission to the part enclosed, but only on condition that at least three-quarters of the ice available for the purpose of skating is open to the use of the public free of charge;

(b) To set apart any such part of the park or ground as may be fixed by the local authority, and may be described in a notice board affixed or set up in some conspicuous position in the park or ground for the purpose of cricket, football, or any other game

Section 76.

or recreation, and to exclude the public from the part set apart while it is in actual use for that purpose ;

(c) To provide any apparatus for games and recreations, and charge for the use thereof, or let the right of providing any such apparatus for any term not exceeding three years to any person ;

(d) To provide or contribute towards the expenses of any band of music to perform in the park or ground :

(e) To enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music, and charge admission thereto (*a*) ;

(f) To place, or authorise any person to place, chairs or seats (*b*) in any such park or ground, and charge for, or authorise any person to charge for, the use of the chairs so provided ;

(g) To provide and maintain any reading rooms, pavilions, or other buildings and conveniences, and to charge for admission thereto, subject in the case of reading rooms to the limitation that such a charge shall not be made on more than twelve days in any one year, nor on more than four consecutive days ;

(h) To let any pavilion or other building so provided by them to any person for the purpose of entertainments, and authorise that person to charge for admission thereto ;

(i) To provide and maintain refreshment rooms in any such park, and either manage them themselves, or, if they think fit, let them to any person for any term not exceeding three years.

(2) Any expenses of the local authority incurred in the exercise of the powers given to them by this section shall be defrayed out of the fund or rate out of which the expenses of the park or ground, as to which the powers are exercised, are payable, and any receipts arising from the exercise of any such powers shall be carried to the credit of the same fund or rate.

(3) The expenses incurred by the council in the exercise of their power under this section to provide or contribute to a band shall not in any one year exceed an amount equal to that which would be produced by a rate of an amount which shall be approved by the Local Government Board, and shall not exceed a penny on the property liable to be assessed for the purpose of the rate out of which the expenses of the park or ground are payable, as assessed for the time being for the purposes of that rate.

(4) No power given by this section shall be exercised in such a manner as to contravene any covenant or condition subject to which a gift or lease (*c*) of a public park or pleasure ground has been accepted or made, without the consent of the donor, grantor, lessor, or other person or persons entitled in law to the benefit of such covenant or condition.

The effect of this section will be gathered on reference to the notes under the P. H. A., 1875, s. 164, *ante*, p. 369.

(*a*) The payment for a seat within the enclosure in order to listen to the performance is a payment for admission to an entertainment within the meaning of the Finance (New Duties) Act, 1916, and is subject to entertainments duty (*Cordiner* v. *Stockham*, [1920] 1 K. B. 104 ; 83 J. P. 246).

(*b*) For an action against an authority in respect of insecure seats supplied by them to a bandmaster for beach entertainments, see *Dare* v. *Bognor U. D. C.*, on p. 371, *ante*. **Note to Section 76.**

(*c*) Note that the sub-section mentions gifts and leases, but not purchases.

77. The local authority may appoint officers for securing the observance of this Part of this Act, and of the regulations and byelaws made thereunder, and may procure such officers to be sworn in as constables for that purpose, but any such officer shall not act as a constable unless in uniform or provided with a warrant. Power to appoint officers.

See the notes under the P. H. A., 1875, s. 164, *ante*, p. 369.

PART VII.

POLICE.

The provisions of this Part of the Act will only be operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1021, 1022.

78. The local authority may from time to time make regulations with respect to such streets, to be specified in the regulations, as are specially liable to be obstructed by reason of the amount and nature of the traffic : Regulations as to street traffic.

(a) Prescribing the line to be kept at any street crossing by all persons riding or driving ;

(b) Requiring the drivers of heavy and slow-moving vehicles to keep their vehicles to a particular portion of the street.

All regulations under this section shall be subject to the approval of the Secretary of State.

Any person who shall contravene any such regulation, after warning given by word or signal by a police constable stationed in the street to direct the traffic, shall be liable to a penalty not exceeding forty shillings.

Under the existing law urban authorities have such powers with regard to the control of street traffic as are contained in ss. 21 and 22 of the Town Police Clauses Act, 1847, incorporated in the P. H. A., 1875, by *ibid.*, s. 171. See those two sections in App. I., *post*, Vol. II. The present section, if applied, confers wider powers. See also s. 80, *post*, p. 1066, which contains another useful provision.

Rural as well as urban councils may apply to have these sections put in force in their district. See s. 3 (1), (4), *ante*, pp. 1021, 1022, and s. 13, *ante*, p. 1025.

Under a local Act containing similar provisions (except that regulations required no approval) a corporation made regulations requiring (*inter alia*) that drivers of heavy and slow moving vehicles should keep by the nearside kerb ; the regulations contained a note that offenders would be liable to a penalty, saying nothing about "after warning," etc. It was held that a driver could not be convicted unless he had received and disregarded a warning (*Chorlton* v. *Liggett* (1910), 74 J. P. 458 ; 103 L. T. 543).

A byelaw provided that "if any person shall drive any carriage and shall not keep the same on the left or near side of the road in any street in passing along the same except in cases in which he shall have occasion to pass any other carriage or of actual necessity or some sufficient reason for deviation therefrom," he should be liable to a penalty. A driver drove a lorry in a street varying from 29½ to 31 feet in width, in which was a double set of tram lines over which electric cars passed every two or three minutes. He drove so that the near wheels were about 10 feet from the kerb,

Note to Section 78.

the off wheels being a few inches from the centre of the road, but never over the centre line. There were no other vehicles in that part of the road at the time, and he did not cause any obstruction. It was held that he had not contravened the byelaw (*Bolton* v. *Everett* (1911), 75 J. P. 534; 105 L. T. 830).

As to it being no offence under the Highway Act, 1835, s. 78, for one driver to overtake and pass on the near side another driver who assents to his so doing, there being no other traffic on the road, see *Nuttall* v. *Pickering*, [1913] 1 K. B. 14; 77 J. P. 30; and see *Sleith* v. *Godfrey* (1920), 85 J. P. 46.

Dangerous riding and driving.

79. Every person who shall ride or drive so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare shall be liable to a penalty not exceeding forty shillings and may be arrested without warrant by any constable who witnesses the offence.

The Highway Act, 1835, s. 78, which is in force throughout the country, and creates many offences which may be committed by drivers of vehicles on highways, provides (*inter alia*) that if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same *furiously* so as to endanger the life or limb of any passenger, he shall, if he is not the owner of a carriage, etc., so driven, be liable to forfeit a sum not exceeding £5, and shall, if he is such owner, be liable to forfeit a sum not exceeding £10. It renders an offender liable to arrest by any person who sees the offence committed.

In urban districts further provision in this behalf is made by the Town Police Clauses Act, 1847, s. 28, incorporated with the P. H. A., 1875, by *ibid.*, s. 171; it provides that any person who in any street to the obstruction, annoyance, or danger of the residents or passengers rides or drives *furiously* any horse or carriage, or drives *furiously* any cattle, shall be liable to a penalty not exceeding forty shillings, or may be imprisoned for a period not exceeding fourteen days; and any constable may take into custody, without warrant, any person who within his view commits the offence.

Where the present section is applied (by an Order of the Home Secretary) it will no longer be necessary to prove that the riding or driving was *furious* if it was such as to endanger the life or limb of any person or was dangerous to the passengers in the thoroughfare.

Quære, whether the word "thoroughfare" should be construed strictly as excluding a cul-de-sac.

As to leading or driving animals.

80. The local authority may, by order, prescribe the streets in which, and the manner according to which, the leading or driving of animals shall be permitted within their district, provided that the route or routes which it shall be lawful for the local authority so to prescribe shall not be such as would prevent the passage of cattle between any market on the one hand, and any railway station or landing wharf in the district or any place beyond the district on the other hand, when such animals are merely passing between such market and railway station, landing wharf, or other place aforesaid, and the local authority shall be bound to allow at all times a reasonably short and efficient route or routes for the passage of such animals. Provided also that any such order shall only operate between the hours of nine in the morning and nine in the evening, and shall not prevent the owner of any animals driving the same to or from his own premises, and nothing in this enactment contained shall authorise the local authority to interfere with the leading or driving of any animals to any duly licensed slaughter-house.

Note to Section 80.

See also ss. 78, 79, *ante*, pp. 1065, 1066, and notes thereto. This section only becomes operative when applied to a district by Order of the Home Secretary: see s. 3 (1), (4), *ante*, pp. 1021, 1022. No penalty is provided for the breach of an Order.

The plaintiff was riding a bicycle along a highway after dark. She had a lamp on her bicycle and it was burning properly. The defendant, a farmer, wished to transfer a colt, an unbroken animal about 18 months old, from one farm to another, and was bringing the colt along the road. In front he had a boy leading a mare, then came the colt, and behind the colt the defendant was driving a trap to keep the colt from bolting back. When the plaintiff approached the colt was startled by the light on her bicycle and darted from one side of the road to the other, and knocked the plaintiff over, causing injuries for which she sued the defendant. It was held that as the colt had done just what in the circumstances might have been expected, the defendant was liable (*Turner* v. *Coates* (1916), 33 T. L. R. 79).

Extending definition of "public place" and "street" for certain purposes.

81. Any place of public resort or recreation ground belonging to, or under the control of, the local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall for the purpose of the Vagrancy Act, 1824, and of any Act for the time being in force altering or amending the same, be deemed to be an open and public place, and shall be deemed to be a street for the purposes of section twenty-nine of the Town Police Clauses Act, 1847, and also for the purposes of so much of section twenty-eight of that Act as relates to the following offences:

Every person who suffers to be at large any unmuzzled ferocious dog, or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every common prostitute or night walker loitering and importuning passengers for the purpose of prostitution:

Every person who wilfully and indecently exposes his person:

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language:

Every person who wantonly discharges any firearm or discharges any missile or makes any bonfire:

Every person who throws or lays any dirt, litter, ashes, or night soil, or any carrion, fish, offal, or rubbish, on any street.

This section only becomes operative when applied to a district by Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1021, 1022.

Vagrancy Acts.

The Vagrancy Act, 1824, s. 3 (*inter alia*), provides that every common prostitute wandering in the *public streets or public highways*, or in any *place of public resort*, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any *public place, street, highway, court or passage* to beg or gather alms, or causing or procuring or encouraging any child or children so to do; shall be deemed an idle and disorderly person within the true intent and meaning of this Act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month. *Ibid.*, s. 4, deals (*inter alia*) with persons wilfully exposing to view, *in any street, road, highway, or public place*, any obscene print, etc. and with any person wilfully exposing his person in any *street, road, or public*

Note to Section 81.

highway, or in the view thereof, or in any *place of public resort*, with intent to insult any female. So far, therefore, as these sections are concerned, the text if applied to a district will not alter the law, for in neither is the expression " open and public place " used.

By the Vagrant Act Amendment Act, 1873, s. 3, every person playing or betting by way of wagering or gaming *in any street, road, highway, or other open and public place, or in any open place to which the public have or are permitted to have access*, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance, shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and as such may be convicted and punished under the provisions of that Act, or, in the discretion of the justice or justices trying the case, in lieu of such punishment, by a penalty for the first offence not exceeding forty shillings, and for the second or any subsequent offence not exceeding five pounds. So far as this section is concerned the text if applied to a district will not alter the law much, even if at all. Firstly, a place of public resort or recreation ground belonging to, or controlled by, an authority is, *semble*, apart from it " an open place to which the public have or are permitted to have access " : see *Langrish* v. *Archer* and *Airton* v. *Scott*, p. 1069, *post*. Secondly, a piece of unfenced ground adjoining or abutting upon a street, upon which members of the public are in fact found, would also appear to be " an open place to which the public have access " ; even if it were necessary to find that the public are permitted to have access to it, the mere absence of any fencing would probably justify such a finding unless it was proved that the owner had tried to turn persons off, and had been defied by them.

In the Vagrancy Act, 1898, the expression used in s. 1 is *public place*, and the text would, therefore, in this instance appear to make no alteration in the law.

Town Police Clauses Act.

The text further provides that for the purposes of s. 29 of the Town Police Clauses Act, 1847, and of s. 28 of that Act so far as certain specified offences are concerned, any place of public resort or recreation ground belonging to, or under the control of, a local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall be deemed to be *a street*.

Section 29 of the Town Police Clauses Act, 1847, imposes a penalty upon any person " drunk in any street and guilty of any riotous or *indecent* behaviour." It was, however, afterwards by the Licensing Act, 1872, s. 12, as amended by the Licensing Act, 1902, s. 8, enacted (*inter alia*) that every person who in any highway or other public place (*including in that expression any place to which the public have access, whether on payment or otherwise*) is guilty while drunk of riotous or *disorderly* behaviour, etc. shall be punishable as therein mentioned. Unless, therefore, indecent behaviour is not necessarily disorderly behaviour, it is difficult to see how the text will amend the law.

Section 28 of the Town Police Clauses Act, 1847, deals with a large number of offences committed " in any street " and " to the obstruction, annoyance, or danger of the residents or passengers." Seven of these offences are selected, and on the text being applied to a district by Order of the Home Secretary, an advantage will certainly be gained. The first two of these offences deal with ferocious dogs and furious riding or driving, and call for no comment. The third, which deals with solicitation, calls for notice. The existing provision in the Vagrancy Act is restricted to public streets and highways and places of public resort, and to riotous and indecent behaviour ; probably under that section a piece of vacant land in a town, if frequented by the public, would be held to be a place of public resort, but where the new provision is put in force it will free the hands of the police and relieve them from the necessity of proving that the solicitation was of such a nature as to be " riotous and indecent," a point as to which opinions are apt to differ : see *R.* v. *De Ruiter* (1880), 44 J. P. 90 ; *Bonner* v. *Lushington* (1893), 57 J. P. 168 ; 68 L. T. 91. The fourth offence is that of indecent behaviour. Under the present law an indictment will lie although the *locus* is not, strictly speaking, a public place (see *R.* v. *Wellard* (1884), 14 Q. B. D. 63 ; 49 J. P. 296) ; and there is a summary penalty under the Vagrancy Act where the offence is committed with intent to insult any female in (*inter alia*) any place of public resort. The fifth offence deals with the exhibition of indecent matter, which is already punishable in a " public place " under the Vagrancy Act, and with the use of profane or obscene language, for which

(except under byelaws) there is no summary penalty where the *locus* is not a street within the meaning of the Town Police Clauses Act, 1847. Lastly, there are two offences dealing with the discharge of firearms, catapults, etc., the lighting of bonfires, and the deposit of rubbish. It will still be necessary in these cases to prove obstruction, annoyance, or danger to residents or inhabitants; but, *semble*, it is not necessary to call persons who have been actually annoyed, etc.; see notes to s. 28 of the Act of 1847, in App. I., *post*, Vol. II. **Note to Section 81.**

It may be useful here to give a reference to cases in which the courts have construed such expressions as "public place," "place of public resort," "place to which the public have access," etc., under different statutes: *Langrish* v. *Archer* (1882), 10 Q. B. D. 44; 47 J. P. 295 (railway carriage); *Ex parte Freestone* (1856), 25 L. J. M. C. 121 (railway carriage); *Ex parte Davis* (1857), 26 L. J. M. C. 178; 21 J. P. 280, and *Woods* v. *Lindsay*, [1910] S. C. (J.) 88 (railway platforms); *Walker* v. *Reid*, [1911] S. C. (J.) 41 (railway mineral depot); *Case* v. *Storey* (1868), L. R. 4 Ex. 319 (railway station); *Campbell* v. *Kerr*, [1912] S. C. (J.) 10 (shed on quay); *Sewell* v. *Taylor* (1859), 7 C. B. (N.S.) 160; 23 J. P. 792 (auction in private house); *Cole* v. *Coulton* (1860), 2 El. & El. 695; 29 L. J. M. C. 125 (alehouse); *M'Intyre* v. *Morton* (1912), 49 Sc. L. R. 781 (public rooms of hotel); *Russon* v. *Dutton* (1911), 75 J. P. 209; 104 L. T. 601 (public house); *Airton* v. *Scott* (1909), 73 J. P. 148; 100 L. T. 393, and *Turnbull* v. *Appleton* (1881), 45 J. P. 469 (athletic and recreation grounds); *Breslin* v. *Thompson*, [1910] S. C. (J.) 5 (vacant building sites); *Lang* v. *Walker*, [1910] S. C. (J.) 41 (semi-private passage); *Kitson* v. *Ashe*, [1899] 1 Q. B. 425; 63 J. P. 325 (private land open but not enclosed). As to public vehicles in or passing along a street, see *Ex parte Freestone*, *supra*; *R.* v. *Holmes* (1853), 22 L. J. M. C. 122; 17 J. P. 390; *R.* v. *Weller* (1894), 58 J. P. 286; *Martin* v. *M'Intyre* (1910), 47 Sc. L. R. 645. "Public place," etc.

82. The local authority for the prevention of danger, obstruction, or annoyance to persons using the seashore may make and enforce byelaws to— Byelaws as to seashore.

(1) Regulate the erection or placing on the seashore, or on such part or parts thereof as may be prescribed by such byelaws, of any booths, tents, sheds, stands, and stalls (whether fixed or movable), or vehicles for the sale or exposure of any article or thing, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, whether drawn or propelled by animals, persons or any mechanical power, and the playing of any games on the seashore, and generally regulates the user of the seashore for such purposes as shall be prescribed by such byelaws:

(2) Regulate the user of the seashore for riding and driving;

(3) Regulate the selling and hawking of any article, commodity, or thing on the seashore;

(4) Provide for the preservation of order and good conduct among persons using the seashore. Provided that no byelaws affecting the foreshore below high-water mark shall come into operation until the consent of the Board of Trade has been obtained.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1021, 1022. Byelaws made under it must be submitted to him for confirmation: see s. 9, *ante*, p. 1024.

See notes to the P. H. A., 1875, s. 164, p. 374, *ante*, for cases in which byelaws as to the seashore have been considered by the courts.

83. The local authority may, for the prevention of danger, obstruction, or annoyance to persons using the esplanades or promenades within Byelaws as to promenades.

Section 83. the district, make byelaws prescribing the nature of the traffic for which they may be used, regulating the selling and hawking of any article, commodity, or thing thereon, and for the preservation of order and good conduct among the persons using the same.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1021, 1022. Byelaws under it must be submitted to him for confirmation: see s. 9, *ante*, p. 1024.

See as to byelaws upon such matters cases cited in notes to the P. H. A., 1875, s. 164, at p. 374, *ante*.

As regards an authority's power over a parade provided by them under a local Act, reference may be made to *Att.-Gen.* v. *Blackpool Corporation* (1907), 71 J. P. 478, in which the authority were held to be in the position of trustees of the parade for limited public purposes. By their local Act of 1865, the corporation were authorised to make and maintain a carriage-drive and a promenade (called "the parade") by the sea. It was provided by s. 13 that the carriage-drive should be a public highway, by s. 17 that the parade should not be a public highway, and by s. 18 that it should be "kept and used exclusively for the purposes of recreation by persons on foot, and with or without carriages, in respect of which toll is authorised to be taken." Section 19 authorised a toll of twopence for every bath-chair, etc. or like carriage driven by human power. By a later Act of 1899, additional works were authorised, including a new carriageway, absorbing the original parade, a new road with a tramway thereon alongside the new carriageway, and a new parade alongside the tramway. By s. 7 the corporation might appropriate the whole or such part of the new parade as they might think fit for the exclusive use of foot passengers, and by s. 8 the new road was to be for the exclusive purpose of the tramway. The parade was, in fact, used exclusively for foot passengers and bath-chairs, etc. The corporation, in 1906, gave their approval to motor car races being held on the parade, and gave permission for part of the tramway road to be used for the purpose of cars returning to the starting point. They also undertook to keep the portion of the parade over which the races were to be run clear of traffic, and to erect a barrier and provide the necessary police control. An action was brought by the Attorney-General, at the relation of a ratepayer, to restrain the corporation from organising or promoting motor races on the sea front. It was held by the Vice-Chancellor of the Palatine Court that the corporation were in the position of trustees of the parade for limited public purposes, namely, for the purpose of use by foot passengers, perambulators, invalid carriages, and similar vehicles, and that it was an abuse of the parade to allow it to be used for either horses or motor cars, and *a fortiori* motor races.

Licences to porters.

84.—(1) The local authority may from time to time grant to any person whom they think fit a licence to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire, and may charge a fee of one shilling for any such licence.

(2) The local authority may from time to time make byelaws for regulating the conduct of any persons so licensed and for fixing the charges to be made by them.

(3) Every such licence may be granted for a year or for any less period according as the local authority may think fit, and may be suspended or revoked or endorsed by the local authority for a breach of such byelaws or whenever they shall deem such suspension or revocation or endorsement to be necessary or desirable in the interests of the public: Provided that the existence of this power to suspend or revoke or endorse a licence shall be plainly set forth in the licence itself.

(4) Every such licence whensoever issued shall expire on the thirty-first day of March next following the date of its issue, and may contain conditions as to the badge which the holder of any licence shall wear.

(5) If any person while unlicensed represents himself to be licensed, or wears any badge for the purpose of representing himself as licensed to carry on any of the callings specified in this section, he shall be liable to a penalty not exceeding twenty shillings. Section 84.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary (see s. 3 (1), (4), *ante*, pp. 1021, 1022). Byelaws under it require confirmation by him (see s. 9, p. 1024, *ante*).

There is nothing in the section to compel the persons referred to therein to take out a licence, and so long as they refrain from doing so, they will be under no obligation to observe any byelaws made by the authority.

85.—(1) Every person who shall carry on, for the purpose of private gain, the trade or business of keeper of a female domestic servants' registry shall register his name and place of abode, and also the premises in which such trade or business is carried on, in a book to be kept at the offices of the local authority for the purpose. Registries for servants.

(2) The local authority may make byelaws prescribing the books to be kept and the entries to be made therein, and any other matter which the local authority may deem necessary for the prevention of fraud or immorality in the conduct of such trade or business, and for regulating any premises used for the purposes of or in connection with such trade or business.

(3) The person registered shall keep a copy of the byelaws made by the local authority under this section hung up in a conspicuous place in the registered premises.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall at all reasonable times be afforded by the person registered full and free power of entry into the registered premises for the purpose of inspecting the registered premises and the books required to be kept by such person.

(5) Any person carrying on such trade or business as aforesaid whose name, place of abode, and premises in which such trade or business is carried on have not been registered in accordance with sub-section one of this section, or whose registration has been cancelled or suspended as hereinafter provided, or acting in contravention of any of the provisions of this section or of any byelaw made thereunder, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the court may (in lieu of or in addition to imposing a penalty) order the suspension or cancellation of the registration.

(6) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient.

This section only becomes operative in a district to which it is applied by an Order of the Home Secretary: see s. 3 (1), (4), *ante*, pp. 1021, 1022.

Sub-section (6) imposes on an authority to whose district the section is applied the duty of giving public notice of its provisions; but it is submitted that neglect on the part of the authority to perform this duty will not excuse a keeper of a registry for breach of the provisions (see *Duncan* v. *Knill* (1907), 71 J. P. 287; 96 L. T. 911).

Section 86.

As to dealers in old metal and marine stores.

86.—(1) Every person who shall carry on business as a dealer in old metal or as a marine store dealer shall register his name and place of abode and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority.

(2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired.

(3) Every person who shall carry on such business without having so registered or without keeping such book and making such entries as required by this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person so authorised in the execution of his duty under this sub-section shall be liable to a penalty not exceeding five pounds.

(5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district and by handbills and otherwise in such manner as they think sufficient.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary: see s. 3 (1), (4), *ante*, pp. 1021, 1022.

By the Old Metal Dealers Act, 1861, s. 3, "In the construction and for the purposes of this Act the term 'dealer in old metals' shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores; and the term 'old metals' shall mean the said articles." See the provisions of that Act generally as to dealers in old metals, and also the Prevention of Crimes Act, 1871, s. 13.

As to "marine store dealers," *i.e.*, persons dealing in, buying or selling, anchors, cables, sails, old junk, old iron or other marine stores of any kind, see ss. 538—541 of the Merchant Shipping Act, 1894.

As to the prohibition of purchases from children under sixteen, see Merchant Shipping Act, 1894, s. 540, and Children Act, 1908, s. 116.

In Ireland under a somewhat similar section, requiring licensing instead of registration, it has been held that the dealer must enter the vendor's *real* name, etc. and cannot protect himself by proving that he entered in good faith the name, etc. given to him (*Toppin* v. *Marcus*, [1908] 2 I. R. 423); and also that a licensed dealer may purchase old metal through an unlicensed agent even off his licensed premises, but must be responsible for proper and accurate entries being made in his books (*Dunne* v. *Lee*, [1913] 2 I. R. 205). See also as to who is a "general dealer" under the Irish Act, *Kelly* v. *Rice*, [1906] 2 I. R. 1; *Gamble* v. *Rainey* (1912), 46 Ir. L. T. 200, and as to what amounts to "using" a place for business, *Hall* v. *O'Brien* (1905), 40 Ir. L. T. 33.

Sub-section (5) of the text imposes on an authority to whose district the section is applied the duty of giving public notice of its provisions; but it is submitted that neglect on the part of the authority to perform this duty will not excuse a dealer for breach of its provisions (see *Duncan* v. *Knill*, *ante*, p. 1071).

PART VIII.

FIRE BRIGADE.

Power to police constable to enter and break open premises in case of fire.

87. Any police constable acting under the orders of his superior officer, and any member of the fire brigade of the local authority being on duty, and any officer of the local authority, may enter and if necessary break into any building in the district being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, without the consent of the owner or occupier thereof respectively, and may do all such acts and things as they may deem necessary for extinguishing fire in any such building or for protecting the same or rescuing any person or property therein from fire.

This section can only be put in force by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1021, 1022.

It has been said that the common law justifies an entry for the purpose of preventing the spread of a fire (9 Edw. 4, 35 pl. 10), and in general a licence is given by law to go on to adjoining land to abate a nuisance (Clerk and Lindsell on Torts, 6th ed., p. 369).

Power to police officer to control street traffic at fires.

88. The officer in charge of the police at any fire in the district shall have power to stop or regulate the traffic in any street whenever in his opinion it is necessary or desirable to stop or regulate such traffic for the purpose of extinguishing the fire or for the safety or protection of life or property, and any person who wilfully disobeys any order given by such officer in pursuance of this section shall be liable to a penalty not exceeding five pounds.

See note under s. 87, *supra*.

Captain of fire brigade or other officer to have control of operations.

89. The captain or superintendent of the fire brigade of the local authority, or other officer of such fire brigade for the time being in charge of the engine or other apparatus for extinguishing fires, attending at any fire within the district shall from the time of his arrival and during his presence thereat have the sole charge and control of all operations for the putting out of such fire, whether by the fire brigade of the local authority or any other fire brigade, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or water supply, and the selection of the parts of the building on fire or of adjoining buildings against which the water is to be directed.

See note under s. 87, *supra*.

Agreements with local authorities for common use of fire appliances.

90. The local authority of the district and the local authority of any borough or urban or rural district, or the parish council of any parish, may enter into and carry into effect agreements for the common use of any fire engines with their appurtenances and firemen or for mutual assistance in case of fire.

See note under s. 87, *supra*.

Urban councils derive their powers for the provision of fire appliances from the Town Police Clauses Act, 1847, s. 32 (in App. I., *post*, Vol. II.), incorporated in the

Note to Section 90.

P. H. A., 1875, by *ibid.*, s. 171; parish councils from the Lighting and Watching Act, 1833, s. 44, or the Poor Law Amendment Act, 1867, s. 29. See the L. G. A., 1894, ss. 6 (1) (c) (ii), 7, 53 (1). Certain powers for promoting joint action are already in force under the P. H. A., 1875, s. 285; the L. G. A., 1894, s. 57; and the Parish Fire Engines Act, 1898.

It is not clear from the present section whether a rural council must obtain urban powers by Order of the Ministry of Health before taking action thereunder, but it is understood that the department advises this course. Further, the Secretary of State is only disposed in ordinary cases to give the powers of s. 90 where the local authority possesses a fire brigade and applies for the whole or the greater portion of Part VIII. of the Act. See also the note as to "Fire engines and brigades," at p. 145, *ante*, and the notes on p. 394, *ante*.

PART IX.

SKY SIGNS.

Sky signs.

91.—(1) (a) It shall not be lawful to erect or fix to, upon, or in connection with any building or erection any sky sign, and it shall not be lawful to retain any existing sky sign so erected or fixed for a longer period than three years after the commencement of this section, nor during that period except with the licence of the local authority, and in the event of such licence being granted then only for such period not exceeding three years from the commencement of this section and under and subject to such terms and conditions as shall be therein prescribed.

Outside London there has hitherto been no power to control or prevent the erection of sky signs except under local Acts. Such power can now be obtained by means of an Order of the Home Secretary applying s. 91 to the district. See s. 3 (1), (4), *ante*, pp. 1021, 1022.

(b) Provided that in any of the following cases a licence of the local authority under this sub-section shall become void (namely);

(i) If any addition to any sky sign be made except for the purpose of making it secure under the direction of the surveyor;

(ii) If any change be made in the sky sign or any part thereof;

(iii) If the sky sign or any part thereof fall either through accident, decay, or any other cause;

(iv) If any addition or alteration be made to or in the house, building, or structure on, over, or to which any sky sign is placed or attached if such addition or alteration involves the disturbance of the sky sign or any part thereof; or

(v) If the house, building, or structure over, on, or to which the sky sign is placed or attached become unoccupied or be demolished or destroyed.

(c) Provided also that if any sky sign be erected or retained contrary to the provisions of this Act, or after the licence for the erection, maintenance, or retention thereof for any period shall have expired or become void, it shall be lawful for the local authority to take proceedings for the taking down and removal of the sky sign in the same manner and with the same consequence as to recovery of expenses and otherwise in all respects as if it were an obstruction within the meaning of section sixty-

nine (Future projections of houses, etc., to be removed on notice) of the Towns Improvement Clauses Act, 1847. Section 91.

See this section in App. I., *post*, Vol. II.

(2) Any person acting in contravention of any of the provisions of this section, or of the terms and conditions (if any) of any approval, licence, or consent under this section, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(3) For the purposes of this section—

" Sky sign " means—

Any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction supported on or attached to any post, pole, standard, frame-work, or other support wholly or in part upon, over, or above any house, building or structure which, or any part of which, sky sign shall be visible against the sky from some point in any street or public way, and includes all and every part of any such post, pole, standard, frame-work, or other support ;

The expression " sky sign " shall also include—

Any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way ;

But shall not include—

(a) Any flagstaff, pole, vane, or weathercock unless adapted or used wholly or in part for the purpose of any advertisement or announcement ;

(b) Any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof : Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall or parapet or ridge to, against or on which it is fixed or supported ;

(c) Any word, letter, model, sign, device, or representation as aforesaid relating exclusively to the business of a railway or canal company, and placed wholly upon or over any railway, canal, railway station, wharf, quay, yard, platform, or station or wharf or quay approach belonging to a railway or canal company, and so placed that it cannot fall into any street or public place.

The above definition is similar to that contained in the London Building Act, 1894, s. 125 ; see *R.* v. *Vaughan* (1896), 12 T. L. R. 193, and *London C. C.* v. *Savoy Hotel Co.* (1896), 60 J. P. 457, in which the section was construed. See also *London C. C.* v. *Carwardine* (1892), 62 L. J. M. C. 40 ; 57 J. P. 181 ; and *Tussaud* v. *London C. C.* (1892), 57 J. P. 184 ; 9 T. L. R. 64, decided under the London Sky Signs Act, 1891, which also contained a different definition ; and *Goldstraw* v. *Jones* (1907), 71 J. P. 22 ; 96 L. T. 30, a decision under a local Act as to " a sign."

PART X.

MISCELLANEOUS.

Bathing places.

92. The local authority—

(a) may make byelaws with regard to any public bathing, whether from bathing machines or not, for any of the purposes mentioned in section sixty-nine of the Town Police Clauses Act, 1847, and also for the purpose of regulating the hours of bathing and enforcing the provision and maintenance of any life-saving apparatus or other means of protecting bathers from danger by persons providing accommodation for public bathing; and

(b) may, if they think fit, provide and maintain on or at any place within their district, which abuts on the sea or any river, bathing-sheds or other conveniences with all necessary appliances, and may charge for the use thereof.

This section may be put in force by Order of the Ministry of Health. An authority applying for an Order will probably be required to state the grounds upon which the powers of the section are considered necessary, and a rural district council should ascertain whether they have been invested at any time with the powers of s. 171 (5) of the P. H. A., 1875 (incorporating part of the Town Police Clauses Act, 1847).

Byelaws made under this section require confirmation by the Ministry: see s. 9, *ante*, p. 1024.

The construction placed upon the Town Police Clauses Act, 1847, s. 69, by the L. G. B. was that byelaws made thereunder must be restricted to the regulation of public bathing in connection with the use of bathing machines. This restriction will be removed if this section is applied to a district, and the section widens the scope of the byelaws in other directions. Section 69 of the Act of 1847 applies only where any part of the seashore or strand of any river used as a public bathing-place is within the limits of the special Act. The provision in the text is not so limited, and it would appear therefore that byelaws may be made for regulating bathing in places not adjoining the seashore or a river. Reference may be made to *M'Gregor* v. *Disselduff*, *ante*, p. 434, where a byelaw (under a Scotch Act) prohibiting bathing altogether under certain circumstances was held *ultra vires* on the ground that the statute conferred no power to *prohibit* bathing.

An authority should avoid doing anything which may be construed as an invitation to the public to bathe on foreshore in private ownership (*Conyngham* v. *Broadstairs R. D. C.* (1911), Times, July 22nd).

Provision of life-saving appliances.

93. The local authority of any district may provide and maintain life-saving appliances at any place in their district where they think those appliances are likely to be of use.

This section only becomes operative in a district when applied to it by an Order of the Ministry of Health: see s. 3, *ante*, p. 1021. An Order seems to be readily granted when cause is shown.

Power to licence pleasure boats.

94 (*a*).—(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire and to the boatmen or persons assisting in the charge or navigation o

such boats and vessels, and may charge annual fees for such licences, for a boat or vessel a fee not exceeding the sum of five shillings, and for a boatman or other person a fee not exceeding the sum of one shilling. Section 94.

(2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public : Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel not so licensed or at any time during the suspension of the licence for the boat or vessel.

(4) A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade.

(5) No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form " Licensed to carry persons."

(6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding forty shillings.

(7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation : Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the clerk, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt (*b*).

(*a*) This section only becomes operative in a district when applied to it by an Order of the Ministry of Health : see s. 3, *ante*, p. 1021. An authority applying for such an Order will probably be required to state to what extent pleasure boats are hired in the district, and whether there are any byelaws in force with regard to pleasure boats.

When the section has been applied it will extend the provisions of the P. H. A., 1875, s. 172, p. 395, *ante*.

The defendant, who resided outside a district in which this section was in force, brought his boat to the beach within it and then landed and touted for passengers. Certain persons got into his boat. It was held that there was evidence that he was plying for hire ; and that, although no express evidence was given as to whether the boundary of the district extended below high-water mark, the magistrates were justified in convicting (*Fearon* v. *Warrenpoint U. D. C.* (1910), 44 Ir. L. T. 265) ; see, however, as to England the note to " parish " on p. 5, *ante*.

(*b*) See as to this expression, the note on pp. 551, 552, *ante*.

Section 95.

Extension and amendment of s. 175 and s. 176 of 38 & 39 Vict. c. 55.

95. The powers of a local authority under sections one hundred and seventy-five and one hundred and seventy-six of the Public Health Act, 1875, shall extend to highway purposes (*a*), and notwithstanding anything in section one hundred and seventy-five of the Public Health Act, 1875, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated (*b*) for any purpose approved by the Local Government Board, subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provision affecting the use of the lands contained in any local Act: Provided that the local authority shall not, on any lands so appropriated, create or permit any nuisance; and that the local authority shall not, on any such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Local Government Board, subject to such conditions as they think fit, authorise the work or construction.

Nothing in this section shall affect any rights acquired before the commencement of this section (*c*) under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, but if a dispute, one of the parties to which is a local authority, arises under such an agreement as to any such right, the dispute shall, if either party so require, be settled by the Local Government Board as if it were a doubt or difference within the meaning of section three hundred and four of the Public Health Act, 1875, and the Local Government Board may for that purpose deal by Order with any matters which may be dealt with by an Order or Provisional Order under the said section (*d*).

(*a*) The land can only be acquired compulsorily by means of a Provisional Order of the Ministry of Health confirmed by Parliament: see ss. 175 and 176, *ante*, pp. 412, 417.

A rural council who obtain the powers of this section will not, if they merely succeeded to the powers of a surveyor of highways, obtain any further powers for the acquisition of land for highway purposes or otherwise. They may have to apply to the Ministry of Health for urban powers under s. 149 or s. 154 of the P. H. A., 1875; see notes to those sections and to the L. G. A., 1894, s. 25.

(*b*) Where this section is applied to a district by an Order of the Ministry of Health, it effects an important amendment of the P. H. A., 1875, s. 175, *ante*, p. 412. Apart from this section, an authority are, generally speaking, unable to permanently appropriate land to a purpose which is inconsistent with the particular purpose for which it was acquired. See *Att.-Gen.* v. *Hanwell U. D. C.*, *Att.-Gen.* v. *Pontypridd U. D. C.*, and *Att.-Gen.* v. *Bradford Corporation*, *ante*, pp. 415, 416. Subject to any *special* covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the authority, or to any *special* provision affecting the use of the lands contained in any local Act, lands not required for the purposes for which they have been acquired may be appropriated for any purposes approved by the M. of H. The authority must not, however, on any lands so appropriated, create or permit any nuisance, and must not, on such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious diseases, unless after local inquiry and consideration of any objections made by persons affected, the Ministry, subject

to such conditions as they think fit, authorise the work or construction. The proviso at the end of the section containing a saving of rights acquired, before it is put in operation, under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, must also be noticed.

Note to Section 95.

It is not clear whether an appropriation of a piece of land, the acquisition of which was specifically authorised by a local Act, can be made under the section, but it would appear that land acquired under a provision in a local Act authorising in general terms the acquisition of land for a specified purpose might be so appropriated.

The appropriation of land by an authority which is also a local education authority is provided for by the Education Act, 1921, 11 & 12 Geo. 5, c. 51, s. 113, which enables a local education authority with the consent of and after inquiry by the Minister of Health, to appropriate any land acquired by them otherwise than in their capacity of local education authority.

The M. of H. require authorities applying for the powers of the section to give references to any provisions in any local Acts or Provisional Orders in force in the district bearing upon the question of the appropriation of lands for purposes other than those for which they were required. The Ministry also inquire whether the council have in prospect any special appropriation of land under this section. In this case particulars must be supplied, indicating how and subject to what conditions the land was acquired and for what purpose it is proposed that it should be appropriated.

It is doubtful whether, even with the powers of s. 95 of the present Act, a local authority will find it practicable to appropriate for a different purpose land which has been acquired for public walks and pleasure grounds and over which the public have thus acquired rights. It is understood that the M. of H. take a strict view on this subject. See notes to s. 164 of the P. H. A., 1875.

(*c*) See as to this expression, s. 13, *ante*, p. 1026.

(*d*) See s. 304, *ante*, p. 638.

SCHEDULE.

[IRELAND ONLY.]

THE PUBLIC HEALTH ACT, 1908.

(8 EDW. 7, c. 6.)

An Act to make the provisions of the Public Health Act, 1875, *with respect to the provision and regulation of Markets applicable in rural districts.* [1st August 1908.]

Provision, etc. of markets by rural authorities.

1. A rural district council may, with the consent of the Local Government Board, exercise with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under section one hundred and sixty-six of the Public Health Act, 1875, and sections one hundred and sixty-seven and one hundred and sixty-eight of that Act shall apply with respect to the exercise of those powers by a rural district council as they apply with respect to the exercise of those powers by an urban district council.

Construction and short title.

2.—(1) This Act shall be construed as one with the Public Health Act, 1875.

(2) This Act may be cited as the Public Health Act, 1908, and this

Section 2.

Act and the Public Health Acts may together be cited as the Public Health Acts.

See the P. H. A., 1875, ss. 166—168, pp. 376 *et seq.*, *ante*, as to markets. The L. G. B. considered that there were practical difficulties which prevented them from making those sections applicable to rural districts by a simple order under s. 276. This Act gets rid of any difficulty.

In the course of an explanatory circular, dated September 7th, 1908, the L. G. B. said: "The new Act will enable any rural district council, with the consent of the Board to exercise, with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under section 166. . . . In the case of a rural district council, the consent of the owners and ratepayers will not be required. And sections 167 and 168 of that Act are made applicable with respect to the exercise of those powers by a rural district council in the same manner as they apply with respect to the exercise of those powers by an urban district council. Cases in which rural district councils require to exercise powers under the new Act may not be very numerous, but the need for such powers has occasionally been shown, and it has been thought desirable that they should be in existence. Where, for example, it is the custom to hold live stock markets on a portion of the public highway, the provision of a properly constructed and regulated market-place is frequently expedient not merely on sanitary grounds, but for the well-being of the animals offered for sale, and for the convenience both of persons attending the market and of the users of the highway. . . . The powers given by the new Act can only be exercised with the consent of the Board. In any case where they may be thought to be needed the rural district council in applying for consent should furnish the Board with full particulars of the circumstances which in the opinion of the council render the application necessary and of the action which they would propose to take if consent were given. . . . The provision of a market, with proper accessories, will be a purpose for which the council will be enabled to borrow money under the Public Health Act, 1875. The expenses of the council in relation to the maintenance of any market which they may establish will be defrayable as general expenses unless they are determined by order of the Board to be special expenses under section 229 of the Act of 1875. . . . Any byelaws made by the council with respect to any market provided by them under the provisions of section 167 of the Act of 1875, as applied by the new Act, must be submitted to, and confirmed by the Board before they can take effect, and the requirements in relation to byelaws contained in sections 182 to 185 of the Act of 1875 must be otherwise complied with as regards any byelaws so made."

Several rural councils have obtained powers under this Act to establish and regulate markets.

THE LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908.

(8 EDW. 7, c. 43.)

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities. [21st December 1908.]

Representatives of the press to be admitted to the meetings of a local authority subject to a proviso.

1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

This Act was passed in consequence of the decision in *Tenby Corporation* v. *Mason*, referred to on p. 670, *ante*. **Note to Section 1.**

See ss. 3 and 4, *infra*, as to meetings of committees.

2. For the purposes of this Act the expression "local authority" means— Definitions.

(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894;

(b) An education committee and a joint education committee, established under section seventeen of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval;

(c) A board of guardians, and a joint committee constituted in pursuance of section eight of the Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor;

(d) A central body and a distress committee under the Unemployed Workmen Act, 1905;

(e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order;

(f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression "rate" means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression "representatives of the press" means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority. Saving for committee meetings.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings. Powers of committee.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings. Admission of the public.

Section 6.

6. [*Application to Scotland.*]

Short title and extent.

7.—(1) This Act may be cited as the Local Authorities (Admission of the Press to Meetings) Act, 1908.

(2) This Act shall not extend to Ireland.

THE HOUSING, TOWN PLANNING, ETC. ACT, 1909.

(9 EDW. 7, c. 44.)

An Act to amend the Law relating to the Housing of the Working Classes, to provide for the making of Town Planning schemes, and to make further provision with respect to the appointment and duties of County Medical Officers of Health, and to provide for the establishment of Public Health and Housing Committees of County Councils.

[3rd December 1909.]

[In view of the possibility of a Bill for the consolidation of the Housing Acts being introduced and passed into law in the present (1922) Session of Parliament, it has been thought advisable to take out of Vol. I. this Act and also the Housing of the Working Classes Acts, 1890, 1894, 1900, and 1903; the Housing Act, 1914; the Housing (No. 2) Act, 1914; the Housing, Town Planning, etc. Act, 1919; the Housing (Additional Powers) Act, 1919; and the Housing Act, 1921. These Acts or the Consolidation Act (if any) which replaces them will be inserted in Vol. II.]

THE LOCAL GOVERNMENT (ADJUSTMENTS) ACT, 1913 (*a*).

(3 & 4 GEO. 5, c. 19.)

An Act to extend and amend the Law relating to the Adjustment of Financial Relations between Local Government Areas on the Alteration of the Boundaries thereof or other change in relation to which the adjustment takes place. [15th August 1913.]

Amendment of law as to adjustments on alteration of local government boundaries, and extension of matters in respect of which adjustment may be made.

1.—(1) On any adjustment under section thirty-two or section sixty-two (*b*) of the Local Government Act, 1888, or under section sixty-eight (*c*) of the Local Government Act, 1894—

(a) Any adjustment of the Local Taxation Licences, the Estate Duty Grant, and the residue under section one of the Local Taxation (Customs and Excise) Act, 1890) (*d*), shall be carried out in accordance with the rules contained in Part I. of the Schedule to this Act:

(b) Provision shall be made for the payment to any authority of such sum as seems equitable in accordance with the rules contained in Part II. of the Schedule to this Act, in respect of any increase of burden which will properly be thrown on the ratepayers of the area of that authority in meeting the cost incurred by that authority in the execution of any of their powers and

duties as a consequence of any alteration of boundaries or other change in relation to which the adjustment takes place (*e*). Section 1.

(2) This section shall apply to any adjustment made (otherwise than by agreement) under any of the said sections thirty-two and sixty-two of the Local Government Act, 1888, and sixty-eight of the Local Government Act, 1894, whether as originally enacted or as applied in England or Wales by any other Act, or by any Provisional Order, or by any order made or confirmed by the Local Government Board under the Local Government Act, 1888, or the Local Government Act, 1894, and consequent on an alteration of boundaries or other change effected after the passing of this Act.

(*a*) This Act does not apply to adjustments by agreement, but otherwise it applies (s. 1 (2)) to all future adjustments under the L. G. A., 1888, s. 32 (creation of new county boroughs), under *ibid.*, s. 62 (alteration of areas), p. 775, *ante*, and under the L. G. A., 1894, s. 68 (alteration of areas), either as originally enacted or as applied by any other statute or Order. Its object was to give effect to the report of the Joint Committee on Financial Adjustments under the L. G. Acts; for the text of such Report see the annual volume on Local Government, 1911–12, p. 101. See also 75 J. P. N. 414, 427, and see also *ibid.*, p. 421. Accordingly the Act provides for the apportionment of the Local Taxation Licences and Estate Duty Grant, etc. (as to these, see p. 754, *ante*), and it also modifies to a considerable extent the consequences of the decision in *Caterham U. D. C.* v. *Godstone R. D. C.*, p. 776, *ante*; whilst not enabling an authority to claim compensation for loss of area as such, it provides for compensation in respect of any increased burden thrown upon the ratepayers in consequence of the alteration of area.

Reference should be made to the L. G. A., 1888, s. 62, and the L. G. A., 1894, s. 68; in the notes to the former section will be found collected the various cases decided prior to the passing of this Act.

(*b*) See this section and notes thereto, p. 775, *ante*.

(*c*) See this section and notes thereto, p. 980, *ante*.

(*d*) As to the revenues and grants for the apportionment of which s. 1 (1) (a), and Sched., Pt. I., make provision, see notes on pp. 754—756, *ante*.

(*e*) Section 1 (1) (b) and Sched., Pt. II., modify the effect of the decision in the *Caterham Case*, as to which see p. 776, *ante*.

2. This Act may be cited as the Local Government (Adjustments) Act, 1913. Short title.

SCHEDULE.

PART I.

RULES FOR DETERMINING ADJUSTMENT OF THE LOCAL TAXATION LICENCES, THE ESTATE DUTY GRANT, AND THE RESIDUE UNDER SECTION ONE OF THE LOCAL TAXATION (CUSTOMS AND EXCISE) ACT, 1890 (*a*).

(1) The portion of the Local Taxation Licences and Estate Duty Grant payable or estimated to be payable in respect of the area of the administrative county (*b*) as it existed immediately before the appointed day (*b*) shall after the appointed day be divided between the councils between which the adjustment is to be made, and the amount payable to each shall be apportioned on the following basis:

(a) There shall be apportioned to the council of the administrative county from which the area is severed amounts equal to the

Schedule.

average annual amounts of the compulsory payments and transfers made by or on behalf of that council in accordance with section twenty-four (*c*) of the Local Government Act, 1888, in respect of the five years ending the thirty-first day of March preceding the appointed day, less the portions of such average annual amounts paid and transferred for and in respect of the separated area, and amounts equal to such last-mentioned portions shall be apportioned to the council of the other administrative county.

(b) Out of the balance (if any) of the said portion of the Local Taxation Licences and Estate Duty Grant there shall next be apportioned to the council of the administrative county from which the area is severed amounts equal to the average annual amounts of the compulsory payments made by or on behalf of that council in accordance with section twenty-six (*d*) of the Local Government Act, 1888, in respect of the five years ending the thirty-first day of March preceding the appointed day, less the portions of such average annual amounts paid for and in respect of the separated area, and amounts equal to such last-mentioned portions shall be apportioned to the council of the other administrative county.

(c) Out of the balance (if any) of the said portion of the Local Taxation Licences and Estate Duty Grant there shall next be apportioned to the council of the administrative county from which the area is severed a sum equal to one-half of the average annual cost during the five years preceding the appointed day of the maintenance of main roads within the county (including any payments made in respect of the interest on or of the repayment of the capital of loans raised on account of such main roads), after deducting the amount of one-half of such cost incurred in respect of main roads within the area separated from the county, and such last-mentioned amount shall be apportioned to the council of the other administrative county :

Provided that, if it appears that the council of the administrative county from which the area is severed have failed to declare any roads in the county to be main roads which ought to have been so declared, or have declared any roads to be main roads which ought not to have been so declared, proper adjustments shall be made in the calculation of the cost of maintenance of main roads in the county under this rule, by the inclusion of the cost of such roads as ought to have been declared to be main roads or the exclusion of the cost of such roads as ought not to have been declared to be main roads, as the case may require (*aa*) :

(d) If any balance of the Local Taxation Licences and Estate Duty Grant remains after apportioning between the two councils the sums ascertained in accordance with the foregoing rules, such balance shall be divided between the councils in proportion to the rateable values (*b*) on the appointed day of the administrative county from which the area is severed less that area, and of that area, respectively :

(e) If any difficulty arises in ascertaining for the purposes of paragraph (a) or paragraph (b) the portion of any item paid or transferred for and in respect of the separated area or any part thereof, a portion of that item proportionate to the rateable

value at the commencement of the financial year in respect of which the payment or transfer was made of that area or part as compared with the rateable value of the whole area for and in respect of which the item was paid or transferred shall be deemed to have been paid or transferred for and in respect of the separated area :

(f) If the amount available for apportionment under any of the preceding paragraphs is insufficient to meet the whole of the amounts apportioned under the paragraph to the two administrative counties, those amounts shall be reduced proportionately.

(*a*) See note (*d*) on p. 1083, *ante*.

(*aa*) See with reference to this provision *Glamorgan C. C.* v. *Cardiff Corporation*, [1915] 3 K. B. 438 ; 79 J. P. 505.

(*b*) See definition in r. (3), *infra*.

(*c*) See this section, p. 754, *ante*.

(*d*) See this section, p. 758, *ante*.

(2) The residue under section one of the Local Taxation (Customs and Excise) Act, 1890, payable or estimated to be payable in respect of the area of the administrative county as it existed immediately before the appointed day shall, after the appointed day, be divided between the councils in proportion to the rateable values on the appointed day of the administrative county from which the area is severed less that area, and of that area, respectively.

(3) For the purposes of this Schedule, the expression " administrative county " includes a county borough, the expression " appointed day " means the day fixed for the transfer of the separated area from one administrative county to another, or, if the transfer is for the purposes of sections twenty to twenty-six of the Local Government Act, 1888, to be deemed to take effect at some later date, then such later date ; and the expression " rateable value " means (unless the parties to the adjustment otherwise agree) the rateable value as determined by the last valuation list, or if there is no valuation list, by the last poor rate.

PART II.

RULES FOR DETERMINING SUM TO BE PAID IN RESPECT OF INCREASE OF BURDEN ON RATEPAYERS (*a*).

(1) Regard shall be had to—

(a) The difference between the burden on the ratepayers which will properly be incurred by the authority in meeting the cost of executing any of their powers and duties and the burden on the ratepayers which would properly have been incurred by the authority in meeting such cost had no alteration of boundaries or other change taken place ;

(b) The length of time during which the increase of burden may be expected to continue :

Provided that no alteration of income in consequence of an apportionment under Part I. of the Schedule shall be taken into account.

(2) The sum payable to any authority in respect of the increase of burden shall not exceed, or, if payable by instalments or by way of annuity (*b*), the capitalised value of the instalments or annuity shall not exceed, the average annual increase of burden multiplied by fifteen.

Schedule.

(3) Any sum payable in respect of the cost of the maintenance of main roads shall be payable by way of annuity.

(*a*) See notes (*a*) and (*e*) on p. 1083, *ante*. On similar provisions in a Provisional Order Confirmation Act, it was held that where in consequence of an alteration of boundaries the council of the district from which a portion of its area has been taken has to levy an extra rate in the pound upon its ratepayers in order to carry out its duties, as, for example, in paying off a loan, there is an increase of burden within the meaning of the provisions, in respect of which there has to be an adjustment (*Queenborough Corporation* v. *Sheppey R. D. C.*, [1915] 1 K. B. 356; 79 J. P. 155.

By Provisional Order confirmed by Act of Parliament, the city of Birmingham extended its boundaries so as to include certain adjoining Poor Law areas, which were to be unified and form a New Birmingham Union. Equitable adjustments were to be made between the New Birmingham Union on the one hand, and the Tamworth, Meriden, and Bromsgrove Unions on the other, and an arbitrator was appointed to adjust the financial relations between them. Article II. of the Provisional Order provided that "On any adjustment made otherwise than by agreement for the purposes of the Order or of the Confirming Act under s. 32 or s. 62 of the Local Government Act, 1888, or under either of those sections as modified or adapted by the Order—(a) Provision shall be made for the payment to any council or other authority affected by the Order of such sums as seems equitable in accordance with the rules contained in the First Schedule to this Order in respect of any increase of burden which will properly be thrown on the ratepayers of the area of that council or other authority in the execution of any of their powers and duties in consequence of any alteration of boundaries effected by the Order or other change in relation to which the adjustment takes place." Rule 1 of the First Schedule of the Order provided that "Regard shall be had to—(a) The difference between the burden on the ratepayers which will probably be incurred by the council or other authority affected by the Order in meeting the cost of executing any of their powers and duties, and the burden on the ratepayers which would properly have been incurred by that council or other authority in meeting such cost had no alterations of boundaries or other change taken place." The arbitrator had therefore to decide whether it was equitable to order the payment to the New Birmingham Union of any sum in respect of any increase of burden to be thrown on the ratepayers of the area of that authority. As to this the sole evidence provided for the arbitrator by the New Birmingham Union was evidence as to the amount which the parishes, severed from the union now amalgamated as the New Birmingham Union, contributed before the amalgamation to the unions of which they then formed part:—*Held*, that this was not evidence upon which the arbitrator could make an equitable adjustment as directed by the Provisional Order. It was not sufficient for the New Birmingham Union to say that whatever their present burden was it would be so much less if they had the contributions of the excluded parishes (*Birmingham Union* v. *Tamworth Union* (1916), 116 L. T. 342; 80 J. P. 425; 14 L. G. R. 826).

(*b*) Under the L. G. A., 1888, s. 62, a payment by way of adjustment may be made by way of a capital sum or of a terminal annuity.

THE PUBLIC HEALTH (PREVENTION AND TREATMENT OF DISEASE) ACT, 1913.

(3 & 4 GEO. 5, c. 23.)

An Act to amend the Law relating to Public Health as respects the Prevention and Treatment of Disease. [15th August 1913.]

Exercise of powers by local authorities

1. Notwithstanding the provisions of section two hundred and eighty-one of the Public Health Act, 1875 (*a*), the Local Government Board may by order authorise a local authority having jurisdiction in any part

of a united district to exercise in relation to that part any powers which the joint board are also authorised to exercise, subject, however, to such conditions and restrictions as may be imposed by the order. Section 1. —— within areas of joint boards.

(*a*) See this section, p. 617, *ante*; it created a difficulty by preventing (*inter alia*) a sanitary authority which was a constituent member of a joint hospital board from establishing a tuberculosis dispensary for their own district; s. 1 of the new Act gets rid of this difficulty. See also s. 5 of the Public Health (Tuberculosis) Act, 1921, *post*, p. 1116.

Throughout this Act it is now necessary to read the Ministry of Health for the L. G. B.

2. The Local Government Board shall have power to declare that one of the authorities to execute and enforce regulations made by the Board under section one hundred and thirty (*a*) of the Public Health Act, 1875, with a view to the treatment of persons affected with cholera or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases, shall be the council of a county, and that section shall have effect accordingly as if a county council were an authority within the meaning of that section: Enforcement of epidemic diseases regulations by county councils.

Provided that, except in case of emergency, the Local Government Board shall not require the council of a county to execute and enforce any such regulations without the consent of such council.

(*a*) See this section, p. 237, *ante*. As county councils were unknown in 1875, it was at any rate doubtful whether such councils could be declared to be authorities for carrying into effect regulations made under s. 130, and distinct provision is now made upon the point.

3. It shall be lawful for the council of any county or for any sanitary authority to make any such arrangements as may be sanctioned by the Local Government Board for the treatment of tuberculosis: Provided that the power conferred by this section shall be in addition to and not in derogation of any other power. Treatment of tuberculosis.

See also the Public Health (Tuberculosis) Act, 1921 (11 & 12 Geo. 5, c. 12), *post*, p. 1114.

4. Any expenses incurred under this Act shall, in the case of a sanitary authority be defrayed as part of the expenses incurred by them in the execution of the Public Health Acts, and in the case of a county council as expenses for general county purposes, or, if the Local Government Board by order so direct, as expenses for special county purposes charged on such part of the county as may be provided by the order. Expenses.

5. This Act may be cited as the Public Health (Prevention and Treatment of Disease) Act, 1913. Short title.

THE PREVENTION OF CORRUPTION ACT, 1916.

(6 & 7 Geo. 5, c. 64.)

An Act to amend the Law relating to the Prevention of Corruption (*a*).

[22nd December 1916.]

(*a*) This Act amends the Public Bodies Corrupt Practices Act, 1889, 52 & 53 Vict. c. 69, and the Prevention of Corruption Act, 1906, 6 Edw. 7, c. 34. The effect of the amendments will be found stated in the notes to these Acts, *ante*, pp. 794, 1014.

Section 1.

Increase of maximum penalty in certain cases. 6 Edw. 7, c. 34. 52 & 53 Vict. c. 69.

1. A person convicted on indictment of a misdemeanour under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government Department or any public body (*b*), or a subcontract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years :

Provided that nothing in this section shall prevent the infliction in addition to penal servitude of such punishment as under the above-mentioned Acts may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts.

(*b*) See s. 4 (2), *infra*.

Presumption of corruption in certain cases.

2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person (*c*), holding or seeking to obtain a contract from His Majesty or any Government Department or public body (*b*), the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

(*b*) See s. 4 (2), *infra*.
(*c*) See s. 4 (3), *infra*.

Time for taking proceedings.

3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

Short title and interpretation.

4.—(1) This Act may be cited as the Prevention of Corruption Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916.

(2) In this Act and in the Public Bodies Corrupt Practices Act, 1889, the expression " public body " includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions (*d*).

(*d*) In the Act of 1889, the expression " public body " is defined to mean any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body existing elsewhere than in the United Kingdom.

(3) A person serving under any such public body is an agent within the meaning of the Prevention of Corruption Act, 1906, and the expressions " agent " and " consideration " in this Act have the same meaning as in the Prevention of Corruption Act, 1906, as amended by this Act (*e*). Section 4.

(*e*) In the Act of 1906, *ante*, p. 1016, the expression " agent " is defined to include a person serving under the Crown or under any corporation or any municipal borough, county or district council or any board of guardians. It also includes any person employed by or acting for another. And the expression " consideration " includes valuable consideration of any kind.

THE PUBLIC AUTHORITIES AND BODIES (LOANS) ACT, 1916.

(6 & 7 GEO. 5, c. 69.)

An Act to make further provision with respect to the borrowing powers of councils of counties and of municipal boroughs, and of other public authorities and bodies. [22nd December 1916.]

1.—(1) The council of any county or of any municipal borough or of any urban district may, during the continuance of the present war and a period of six months thereafter (*a*), borrow, with the consent of the appropriate Government Department, on the security of all or any of the funds, property, or revenues of the council for the purpose of discharging any outstanding loan of the council, or for the purpose or replacing any sinking fund money or other sums which have been used for purposes for which they had power to borrow, or for the purpose of raising any further sums which the appropriate Government Department authorise them to raise with a view to prospective capital expenditure. Further power of county or borough councils, etc. to borrow.

The application and use of any sums borrowed under this provision shall be subject to such conditions as may be imposed by the appropriate Government Department whose consent is given to the borrowing.

(*a*) This power was temporary and expired on 28th February, 1922. But see sub-s. (3), *infra*, as to re-borrowing.

(2) *During the continuance of the present war, and a period of six months thereafter* (*b*), the council of any county or municipal borough or of any urban district may, with the consent of the Treasury and subject to such conditions as the Treasury may impose, borrow any sums which they have power to borrow for the time being by means of the issue of bearer bonds or other securities to bearer, whether within or without the United Kingdom, and, if thought fit, in any foreign currency.

Any such bonds or securities shall rank, as respects other securities issued by the council, in the same manner as if the sum borrowed by means of those bonds or other securities had been borrowed by means of the issue of stock (*c*).

(*b*) The words in italics were repealed and the powers conferred by this sub-section were made permanent by the Housing (Additional Powers) Act, 1919, 9 & 10 Geo. 5, c. 99, s. 8. Reference may be made to the Finance Act, 1916, 6 & 7 Geo. 5, c. 24, s. 63, which provides that any securities issued in the United States by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under

Note to Section 1.

the authority of the Treasury, shall not be liable to any taxation present or future, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

(c) As to the ranking of stock, see the Stock Regulations in App. II., *post*, Vol. II.

(3) The council of any county or of any municipal borough or of any urban district may re-borrow under the powers given by this Act for the purpose of paying off any money borrowed under those powers; and the limitation on the exercise of those powers to the continuance of the present war and a period of six months thereafter shall not apply to any such re-borrowing.

(4) Any power given by this section shall not derogate from any other power of borrowing, and may be exercised notwithstanding anything in any Act.

Extent, interpretation, and short title.

2.—(1) This Act may be applied to any local authority (other than the council of a county or of a municipal borough or of any urban district), and to any other public body on the application of that authority or body, by the appropriate Government Department; and if so applied, shall be construed, with any necessary modification, as if the authority or body to whom it is applied were substituted for the council of the county or of the municipal borough or urban district.

(2) In this Act, unless the context otherwise requires,—

The expression "appropriate Government Department" means, in the case of the London County Council the Treasury, in the case of other authorities or bodies in England and Wales the Local Government Board (*d*), in the case of authorities or bodies in Scotland the Secretary for Scotland, and in the case of authorities or bodies in Ireland the Local Government Board for Ireland;

The expression "sinking fund money" means money for the time being standing to the credit of any sinking fund, redemption fund, depreciation fund, or fund of a like nature; and

The expression "municipal borough" means, in the application of this Act to Scotland, a royal, parliamentary, or police burgh.

(*d*) For "Local Government Board" now read "Minister of Health" (9 & 10 Geo. 5, c. 21).

(3) This Act may be cited as the Public Authorities and Bodies (Loans) Act, 1916.

THE FINANCE ACT, 1917.

(7 & 8 GEO. 5, c. 31.)

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance.

[2nd August 1917.]

* * * * * *

Power of trustees, etc. to borrow and invest in war securities.

35.—(1) It shall be lawful and shall be deemed always to have been lawful for a trustee to borrow for the purpose of subscribing to or investing in any securities which have been or may be issued in connection with any Government loan raised for the purpose of the present war,

and a trustee shall not be liable for any loss resulting from any borrowing so authorised or from any subscription to or investment in such securities or the sale of any securities for the purpose of such subscription or investment, or from the exercise of any option to convert any securities into securities so issued, whether such borrowing, subscription, investment or sale, or the exercise of such option, was before or after the passing of this Act; and trustees and other persons acting in any fiduciary character are hereby expressly authorised to exercise without the consent of any other person, such powers of borrowing, subscription, investment, sale, or conversion, notwithstanding anything in any instrument creating the trust:

Provided that—

(*a*) In the case of transactions after the passing of this Act, a trustee shall before borrowing for the purpose aforesaid give notice of his intention so to do to the persons for the time being beneficially entitled to the income of the trust fund and the amount borrowed shall not exceed the value for the time being of the trust fund;

(*b*) For the purpose of transactions after the passing of this Act the power to borrow for the purpose of investing in any such securities shall be deemed not to include a power to borrow for the purpose of purchasing any such securities at any time after the subscription list has been closed, or, in the case of any such securities which are issued on application from day to day, after the issue thereof has been discontinued.

(2) This section shall apply to any officer or department who hold funds on account of or for the benefit of any persons or class of persons as part of, or in consequence of, the duties of the officer or department, but shall not apply to any trustee under an implied or constructive trust, except a resulting trust arising on the determination or failure of an express trust.

(3) The foregoing provisions of this section, so far as they relate to the exercise of such powers as aforesaid before the passing of this Act, shall apply to local and other public authorities, notwithstanding any limitations on their powers, in like manner as they apply to trustees.

(4) It is hereby declared that the power conferred by subsection (6) of section one of the War Loan Act, 1916, on companies and bodies of persons and persons responsible for the direction and management of a company or body of persons to hold government securities purchased in pursuance of the powers conferred by that subsection is not limited to the continuance of the present war and a period of twelve months thereafter.

The powers conferred by the said subsection shall include, and shall be deemed as from the commencement of the war to have included, a power on the part of a company or body of persons and of persons responsible for the direction or management of the company or body to borrow, notwithstanding any such limitations as are mentioned in that subsection, for the purpose of investing in or purchasing Government securities in accordance with that subsection.

The securities in which local authorities can invest money for the purpose of a loans fund or a sinking fund are enumerated in the note to the P. H. A., 1875, s. 234. Under this Act an investment in war securities made prior to the passing of the Act was legalised.

Section 3.

REPRESENTATION OF THE PEOPLE ACT, 1918.

(8 GEO. 5.. c. 64.)

An Act to amend the Law with respect to Parliamentary and Local Government Franchises, and the Registration of Parliamentary and Local Government Electors, and the conduct of elections, and to provide for the Redistribution of Seats at Parliamentary Elections, and for other purposes connected therewith (*a*). [6th February 1918.]

(*a*) Only those portions of this Act which affect local authorities are included in this work. Reference should be made to the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921, in the Appendix, *post*, Vol. II., for the transfer of powers under this Act from the Minister of Health (as successor to the L. G. B.) to the Secretary of State.

PART I.

FRANCHISES (*b*).

(*b*) The local government franchises enacted by this Act take the place, as far as respects local government elections within the meaning of the Act, of all local government franchises existing at the time of the passing of the Act (see s. 42, *post*).

* * * * * *

Local government franchise (men).

3. A man shall be entitled to be registered as a local government elector for a local government electoral area (*a*), if he is of full age and not subject to any legal incapacity, and—

(*a*) is on the last day of the qualifying period (*b*) occupying, as owner or tenant, any land or premises in that area; and

(*b*) has, during the whole of the qualifying period (*b*), so occupied any land or premises in that area, or, if that area is not an administrative county or a county borough, in any administrative county or county borough in which the area is wholly or partly situate:

Provided that—

(i) for the purposes of this section a man who himself inhabits any dwelling-house by virtue of any office, service, or employment, shall, if the dwelling-house is not inhabited by the person in whose service he is in such office, service, or employment, be deemed to occupy the dwelling-house as a tenant; and

(ii) for the purposes of this section the word tenant shall include a person who occupies a room or rooms as a lodger (*c*) only where such room or rooms are let to him in an unfurnished state.

(*a*) See as to this expression s. 41 (2), *post*, p. 1100.

(*b*) See ss. 6 and 7 (4), *post*, pp. 1093, 1094.

(*c*) As to the difference between an occupier and a lodger, see the cases cited in the note to s. 90 of the P. H. Act, 1875, *ante*, p. 161.

Local government franchise (women).

4. . . .

(3) A woman shall be entitled to be registered as a local government elector for any local government electoral area (*a*)—

(*a*) where she would be entitled to be so registered if she were a man (*b*); and

(*b*) where she is the wife of a man who is entitled to be so registered in respect of premises in which they both reside, and she has attained the age of thirty years and is not subject to any legal incapacity.

For the purpose of this provision, a naval or military voter who is registered in respect of a residence qualification which he would have had but for his service, shall be deemed to be resident in accordance with the qualification.

(*a*) See as to this expression s. 41 (2), *post*, p. 1100.

(*b*) A woman may be entitled to this franchise if she is of the full age of 21 years. For a parliamentary franchise she must have attained the age of 30 years.

* * * * * *

Qualifying period.

6. The qualifying period shall be a period of six months ending either on the fifteenth day of January, or the fifteenth day of July (*a*), including in each case the fifteenth day (*b*) :

Provided that in the application of this section to a person who is a naval or military voter, or who has been serving as a member of the naval, military or air forces of the Crown at any time during the said six months and has ceased so to serve, one month shall be substituted for six months as the qualifying period.

(*a*) These dates now read "15 December" and "15 June" respectively (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

(*b*) Two qualifying periods are set up. These correspond with the two registers which are to be prepared in each year under s. 11, *post*, p. 1059

Supplemental provisions as to residence and occupation.

7.—(1) Where land or premises are in the joint occupation of two or more persons, each of the joint occupiers shall, for the purposes of this Part of this Act, be treated as occupying the premises, subject as follows :—

. . . . . .

(c) Not more than two joint occupiers shall be entitled to be registered in respect of the same land or premises, unless they are bonâ fide engaged as partners carrying on their profession, trade or business on the land or premises.

(2) Residence in a house or the occupation of a house shall not be deemed to be interrupted for the purposes of this Act by reason only of permission being given by letting or otherwise for the occupation of the house as a furnished house by some other person for part of the qualifying period not exceeding four months in the whole, or by reason only of notice to quit being served and possession being demanded by the landlord of the house ; but the express enactment of this provision shall not affect in any way the general principles governing the interpretation of the expression " residence " and cognate expressions.

Residence is not required for the local government franchise (s. 3) except in the case of a wife under s. 4 (3) (b).

. . . . . .

(4) Notwithstanding anything in this Act, a person shall not be entitled to be registered as a local government elector for a local government electoral area though that person may have been occupying land or premises in the area on the last day of the qualifying period, if that person commenced to occupy the land or premises within thirty days before the end of the qualifying period, and ceased to occupy the land or premises within thirty days after the commencement of the occupation.

Right of person regis-

8. . . .

(2) A person registered as a local government elector for any local

Section 8. —tered to vote.

government electoral area (*a*) shall while so registered (and in the case of a woman notwithstanding sex or marriage) be entitled to vote at a local government election for that area (*b*); but where, for the purposes of election, any such area is divided into more than one ward or electoral division, by whatever name called, a person shall not be entitled to vote for more than one such ward or electoral division.

Notwithstanding anything in this provision a person may be registered for more than one such ward or division of a local government electoral area (not being a municipal borough), and may vote in any such ward or division for which he is registered at an election to fill a casual vacancy.

(*a*) See as to this expression s. 41 (2), *post*, p. 1109.
(*b*) See the next section as to disqualifications for voting.

. . . . . .

Provisions as to disqualifications.

9.—(1) A person shall not be disqualified from being registered or from voting as a parliamentary or local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms (*a*).

(*a*) The statutes imposing disqualifications of this nature (2 & 3 Will. 4, c. 45, s. 36; 30 & 31 Vict. c. 102, s. 40; 39 & 40 Vict. c. 61, s. 14) are repealed by this Act.

(2) Any person, being a conscientious objector to whom this subsection applies, shall be disqualified during the continuance of the war and a period of five years thereafter from being registered or voting as a parliamentary or local government elector, unless, before the expiration of one year after the termination of the war, he proves to the central tribunal as established for the purposes of the Military Service Act, 1916—

5 & 6 Geo. 5, c. 104.

(*a*) that he has during the continuance of the war taken up and, so far as reasonably practicable, continued service which constitutes a person (other than a person serving on full pay as a member of any of the naval, military, or air forces of the Crown) a naval or military voter for the purposes of this Act; or

(*b*) that having been exempted from military service on condition of doing work of national importance he has done such work in accordance with the decision and to the satisfaction of the appropriate tribunal or authority; or

(*c*) that having obtained an absolute exemption from military service without any such condition, he has nevertheless (whether before or after the passing of this Act) been engaged in and, so far as reasonably practicable, continued some work of national importance;

and obtains a certificate from the central tribunal to that effect.

This subsection shall apply to a conscientious objector who either—

(i) has been exempted from all military service (including non-combatant service) on the ground of conscientious objection; or

(ii) having been convicted by court martial of an offence against military law, and having represented that the offence was the result of conscientious objection to military service, has been awarded imprisonment or detention.

Section 9.

The central tribunal established under the Military Service Act, 1916, shall be continued for the purpose of this subsection for a period of a year after the termination of the present war.

If a person disqualified under this subsection would have been entitled to be registered as a parliamentary or local government elector but for that disqualification, the disqualification shall not extend so as to affect the right of the wife of that person to be registered or vote as a parliamentary or local government elector, as the case may be.

(3) A person shall not be entitled to be registered or to vote as a parliamentary or local government elector if he is not a British subject, and nothing contained in this Act shall, except as expressly provided therein, confer on any person who is subject to any legal incapacity to be registered or to vote either as a parliamentary or local government elector any right to be so registered or to vote.

(4) A person shall not be disqualified from voting at any election as a parliamentary or local government elector by reason that he is employed for payment by or on behalf of a candidate at such election, so long as the employment is legal.

(5) Any incapacity of a peer to vote at an election arising from the status of a peer (*b*) shall not extend to peeresses in their own right.

(*b*) A peer cannot vote at a parliamentary election (*Earl Beauchamp* v. *Madresfield Overseers* (1872), L. R. 8 C. P. 245; 42 L. J. C. P. 32; Mackenzie and Lushington's Registration Manual, p. 297).

Provision as to qualification of councillor.

10. A person shall, in addition to and without prejudice to any other qualification, be qualified to be elected a member of the local government authority for any local government electoral area (*a*) if he is the owner of property held by freehold, copyhold, leasehold or any other tenure within the area of that authority (*b*).

(*a*) See as to this expression s. 41 (2), *post*, p. 1100.

(*b*) This provision enables an owner of property to be elected though he may not be entitled to be registered as an elector.

PART II.

REGISTRATION.

Spring and autumn registers.

11.—(1) Two registers of electors shall be prepared in every year, of which one (in this Act referred to as the spring register) shall be made for the qualifying period ending on the fifteenth day of January (*a*), and the other (in this Act referred to as the autumn register) shall be made for the qualifying period ending on the fifteenth day of July (*a*).

(2) The spring register shall come into force on the commencement of the fifteenth day of April and remain in force until the fifteenth day of October, and the autumn register shall come into force on the commencement of the fifteenth day of October and remain in force until the fifteenth day of April.

(*a*) See note (*a*) to s. 6, *ante*, p. 1093.

(3) If for any reason the registration officer fails to compile a fresh spring or autumn register for his area or any part of his area, the register in force at the time when the fresh register should have come into force shall continue to operate as the register for the area or part of an area in respect of which default has been made.

Section 12. — Registration officers and areas.

12.—(1) Each parliamentary borough and each parliamentary county shall be a registration area, and there shall be a registration officer for each registration area.

(2) Where the registration area is a parliamentary county and is coterminous with, or wholly contained in, one administrative county, the clerk of the county council, and where the registration area is a parliamentary borough and is coterminous with, or wholly contained in, one municipal borough, the town clerk of the borough, shall be the registration officer for the area.

In any other case such clerk of the county council, or town clerk, shall be registration officer for the area as the Local Government Board (*a*) may by order direct, subject to any conditions which may be made by the order as to the appointment of deputies for any part of the area.

See the special provisions as to urban districts and London contained in s. 16, *post*, p. 1098.

(*a*) Throughout this Act for "Local Government Board" must now be read "Ministry of Health."

(3) Any of the duties and powers of the registration officer may be performed and exercised by any deputy for the time being approved by the Local Government Board, and the provisions of this Act shall apply to any such deputy so far as respects any duties or powers to be performed or exercised by him as it applies to the registration officer.

(4) In the event of any vacancy in the office of any clerk of the county council or town clerk who is a registration officer, or in the event of his incapacity to act, any acts authorised or required to be done by or with respect to the registration officer may be done by or with respect to any person temporarily appointed in that behalf by the chairman of the county council or the mayor, as the case may be.

Registration duties.

13.—(1) It shall be the duty of the registration officer to compile the spring and autumn register, and to place, or cause to be placed, on the register in accordance with the rules set out in the First Schedule to this Act the names of those entitled to vote as parliamentary electors or local government electors in his registration area, and to comply with any general or special directions which may be given by the Local Government Board with respect to the arrangements to be made by the registration officer for carrying out his duties as to registration.

If a registration officer refuses, neglects or fails without reasonable cause to perform any of his duties in connection with registration, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(2) His Majesty may by Order in Council prescribe the forms to be used for registration purposes and any fees to be taken in connection therewith, and alter the rules contained in the First Schedule to this Act for the purpose of carrying this Act into full effect, or for carrying into effect any Act for the time being in force amending or affecting this Act.

The rules contained in the First Schedule to this Act and any Order so made shall have effect as if enacted in this Act (*a*).

(*a*) See as to the effect of this provision *Ex parte Ringer* and the other cases cited therewith in the note under s. 295 of the P. H. A., 1875, *ante*, p. 629.

Section 14. Appeals.

14.—(1) An appeal shall lie to the county court, as defined by rules of court (*a*), from any decision of the registration officer on any claim or objection which has been considered by him under this Act, or the placing of or refusal to place any mark against any name on the register, and rules of court (*a*) shall be made for the purpose of determining the procedure on any such appeals and for applying and adapting thereto any enactments relating to county courts and the procedure therein :

Provided that an appeal shall not lie where a claimant or objector has not availed himself of his opportunity, as provided in the First schedule to this Act, of being heard by the registration officer on the claim or objection, or as to the placing of or refusing to place any such mark as aforesaid.

(*a*) See the County Court (Registration Appeals) Rules, S. R. & O., 1918, No. 802, L. 27, and amended Rules, S. R. & O., 1919, No. 162, L. 2.

(2) An appeal shall lie on any point of law from any decision of the county court on any such appeal from the registration officer in accordance with rules of the Supreme Court to the Court of Appeal, but no appeal shall lie from the decision of the Court of Appeal.

See the Registration Appeals Rule, 1918, Rules of the Supreme Court, O. 58, r. 21.

(3) The right of voting of any person whose name is for the time being on the register shall not be prejudiced by any appeal pending under this section, and any vote given in pursuance of that right shall be as good as if no such appeal were pending, and shall not be affected by the subsequent decision of the appeal.

(4) Notice shall be sent to the registration officer in manner provided by rules of court of the decision of the county court or of the Court of Appeal on any appeal under this section, and the registration officer shall make such alterations in the electors lists or register as may be required to give effect to the decision.

(5) On any appeal under this section the registration officer shall be deemed to be a party to the proceedings.

(6) If the Lord Chancellor is satisfied on the representation of the judge of any county court that the judge is unable, owing to the necessity of dealing with appeals under this Act, to transact the business of the court with proper despatch, the Lord Chancellor may appoint a barrister of at least seven years' standing to act as assistant judge for such time as the Lord Chancellor may direct, and subject to any conditions which he may impose.

Any assistant judge so appointed shall have all the powers and privileges and may perform any of the duties of the judge, whether under this Act or otherwise, to whom he has been appointed assistant.

An assistant judge shall be paid out of moneys provided by Parliament such remuneration and travelling allowances as may be allowed by the Treasury.

In the application of this provision to a county court district the whole of which is within the Duchy of Lancaster, the Chancellor of the Duchy shall be substituted for the Lord Chancellor.

Expenses of registration.

15.—(1) Any expenses properly incurred by a registration officer in the performance of his duties in relation to registration, including

Section 15.

all proper and reasonable charges for trouble, care and attention in the performance of those duties, and any costs incurred by him as party to an appeal (in this Act referred to as "registration expenses") shall be paid by the council whose clerk the registration officer is, or by whom he is appointed, subject, in cases where the registration area is not coterminous with or wholly contained in the area of that council, to such contributions by the council of any other county or borough as the Local Government Board may direct (*a*).

Any such expenses shall be paid in the case of the council of a county out of the county fund, and if the case requires as expenses for special county purposes, and in the case of the council of a borough out of the borough fund or borough rate, or, where there is no borough fund or borough rate, out of the fund or rate out of which the ordinary expenses of the council of the borough are paid.

(*a*) See hereon the provisions of the Registration Expenses (Contributions) Order, 1918, in the Appendix, *post*, Vol. II.

(2) The Treasury may frame a scale of registration expenses applicable to all or any class or classes of those expenses, and may alter the scale as and when they think fit.

Any expenses incurred by the registration officer of a class to which the scale is applicable shall be taken to be properly incurred if they do not exceed the maximum amount determined by or in accordance with the scale, and so far as they do exceed that amount shall be taken not to have been properly incurred unless the excess is specially sanctioned by the council and the Treasury either before or after the expenses have been incurred.

If any question arises whether any expenses incurred by the registration officer of a class to which the scale is not applicable have been properly incurred or not, that question shall be referred to the Local Government Board, and the decision of the Board on the question shall be final.

The Scales of Registration Expenses now in force will be found in the Appendix, *post*, Vol. II.

(3) Any fees or other sum received by the registration officer in respect of his duties as such officer, other than sums paid to that officer in respect of his registration expenses, shall be accounted for by that officer and paid to the credit of the fund or rate out of which the expenses of that officer are paid.

(4) There shall be paid out of moneys provided by Parliament to the council of any county or borough in aid of the fund or rate out of which any registration expenses are paid by the council, in accordance with this Act, one half of the amount so paid by the council.

(5) On the request of the registration officer of any registration area for an advance on account of registration expenses, the council whose clerk the registration officer is may, if they think fit, make such an advance to him of such amount and subject to such conditions as the council may approve.

Special provisions with respect to urban districts and London.

16.—(1) Where an urban district is coterminous with a registration area which is a parliamentary borough or is wholly contained in such area, this Part of this Act shall apply to that district as it applies to a municipal borough, with the substitution of the clerk of the urban district council for the town clerk, of the urban district council for the

council of the borough, of the general district rate for the borough fund or borough rate, and of the chairman of the council for the mayor. Section 16.

. . . . . .

17.—(1) A freeman of the City of London, being a liveryman of one of the several companies who is entitled to be registered as a parliamentary elector in respect of a business premises qualification within the city, shall be entitled, if he thinks fit, to be entered in a separate list of liverymen in the register of parliamentary electors, and to record his vote for Parliament as a liveryman. Special provision as to registration of freemen, etc.

(2) The foregoing provision shall apply to the freemen of any borough if the council of the borough so resolve, and the expression "freemen" shall include any persons by whatever name called enjoying in that borough rights similar to those enjoyed by freemen of the city of London in that city.

18. Every person who is an assistant overseer at the time of the passing of this Act, and who suffers any direct pecuniary loss in consequence of this Act, shall be entitled to have compensation paid to him as registration expenses by the council responsible for the payment of registration expenses, and in determining such compensation— Compensation to existing officers.

(a) regard shall be had to the conditions and other circumstances required by subsection (1) of section one hundred and twenty of the Local Government Act, 1888, in regard to cases of compensation under that section; and 51 & 52 Vict. c. 41.

(b) the compensation shall not exceed the limit therein mentioned; and

(c) the expression in subsection (1) of that section "The Acts and rules relating to Her Majesty's Civil Service" shall mean the Acts and rules relating to His Majesty's Civil Service which were in operation at the date of the passing of the Local Government Act, 1888; and

(d) the provisions of subsections (2) to (7) of the same section shall apply with such modifications (including the substitution of the "Local Government Board" for the "Treasury") as may be required, and including in subsection (2) the substitution of the words "next before the thirtieth day of September, nineteen hundred and fourteen" for the words "next before the passing of this Act."

In this section the expression "assistant overseer" includes any person executing any of the duties of overseer, and receiving payment therefor.

* * * * * *

35. The following Acts, that is to say,— Certain Acts to have permanent effect.

The Ballot Act, 1872; 38 & 39 Vict. c. 84.

The Parliamentary Elections (Returning Officers) Act, 1875; 41 & 42 Vict. c. 41.

The Parliamentary Elections Returning Officers Expenses (Scotland) Act, 1878; 43 Vict. c. 18.

The Parliamentary Elections and Corrupt Practices Act, 1880; 47 & 48 Vict. c. 70.

The Corrupt and Illegal Practices Prevention Act, 1883; 59 & 60 Vict. c. 1.

The Municipal Elections (Corrupt and Illegal Practices) Act, 1884;

The Local Government (Elections) Act, 1896;

Section 35. shall become permanent Acts, and any provision in any Act in force at the date of the passing of this Act which limits the period for which any of those Acts are to remain in operation shall cease to have effect.

These Acts, now made permanent, had previously been renewed from year to year by the Expiring Laws Continuance Acts.

PART V.

GENERAL.

* * * * * *

Regulations to be laid before Parliament.

40.—(1) All rules, regulations, or provisions made by Order in Council under this Act shall be laid before each House of Parliament forthwith ; and unless and until an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such rule, regulation, or provision is laid before it, praying that the rule, regulation, or provision may be annulled, the rule, regulation, or provision shall have effect as if enacted in this Act.

(2) Any Order in Council under this Act may be revoked or varied as occasion requires by any subsequent Order in Council.

Interpretation.

41. In this Act, unless the context otherwise requires,—

. . . . . .

(2) The expression " local government electoral area " means the area for which any county council, municipal borough council, metropolitan borough council, district council, board of guardians, parish council, or any other body elected at the time of the passing of this Act by persons on the local government register or on the register of parochial electors is elected ; and the expression " local government election " means an election for any such council, board, or body :

. . . . . .

(5) A person who is an inmate or patient in any prison, lunatic asylum, workhouse, poorhouse, or any other similar institution shall not by reason thereof be treated as resident therein for any purpose of this Act :

. . . . . .

(7) For the purposes of registration a person's age shall be taken to be that person's age on the last day of the qualifying period :

(8) The expression " dwelling-house " includes any part of a house where that part is occupied separately as a dwelling-house :

(9) The yearly value of land or premises shall be taken to be the gross estimated rental, or in the metropolis the gross value, where those premises are separately assessed to rates, and in any other case shall be deemed to be the amount which would in the opinion of the registration officer be the gross estimated rental or gross value as the case requires if they were separately assessed :

. . . . . .

(11) The expression " prescribed " means prescribed by His Majesty by Order in Council. Section 41.

42. The parliamentary and the local government franchises enacted by this Act shall take the place of all parliamentary and, so far as respects local government elections within the meaning of this Act, of all local government franchises existing at the time of the passing of this Act ; and the provisions set out in the Sixth Schedule to this Act with respect to the adaptation of Acts shall have effect for the purpose of adapting the law to the provisions of this Act. Adaptation of Acts.

* * * * * *

45. The provisions of this Act shall apply to the Isles of Scilly as if those isles were an administrative county, and as if the council of those isles were a county council, and any expenses incurred by the council under this Act shall be paid as general expenses of the council. Application of Act to the Isles of Scilly.

46.—(1) This Act shall come into operation on the passing thereof : Provided that nothing in this Act shall affect— Commencement of Act and first register.

(a) any parliamentary register for the time being in force, or any parliamentary elections, or the constitution of the House of Commons, until Parliament is first dissolved or ceases to have continuance after the first register to be prepared under this Act comes into force ; or

(b) any local government register for the time being in force, or any local government elections, until the first register to be prepared under this Act comes into force.

(2) Notwithstanding anything in this Act, the first register to be prepared under this Act shall come into force on, and remain in force until, such date as His Majesty may fix by Order in Council, and His Majesty may by any such Order alter, in connection with the first register, any registration dates, including the dates governing the qualifying period, and direct that this Act shall have effect as so altered.

(3) If any difficulty arises as to the preparation of the first register or the holding of the first elections after the commencement of this Act, the Local Government Board may by order do any matter or thing which appears to them necessary for the proper preparation of the register or the proper holding of the elections.

(4) This section shall apply to any new register to be prepared and to any elections held during the continuance of the present war and a period of twelve months thereafter, as it applies to the first register to be prepared under this Act and to the first elections held after the commencement of this Act, respectively.

47.—(1) The enactments mentioned in the Eighth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule. Repeal and short title.

(2) This Act may be cited as the Representation of the People Act, 1918.

Schedule.

SCHEDULES.

Sections 13, 14 (1).

FIRST SCHEDULE.

REGISTRATION RULES.

Form of Register.

Separate part of register for each registration unit.

1. The register shall be framed in separate parts for each registration unit in the registration area.

The registration unit shall be the parish where the parish is wholly contained in one voting area, and where a parish is contained in more than one voting area, shall be each part of the parish contained in a separate voting area; and for the purposes of this rule the expression "voting area" means any polling district, electoral division, borough, county district other than a borough, and any ward of a borough, county district, or parish, and any other area for which a separate election at which the register is to be used is held.

Separate divisions for parliamentary and local government electors.

2. The register shall, as respects each registration unit, contain the names of those who are entitled to vote as parliamentary electors and of those who are entitled to vote as local government electors, but shall be framed so as to show in separate divisions the names of those who are entitled to vote both as parliamentary and local government electors, the names of those who are entitled to vote as parliamentary electors but not as local government electors, and the names of those who are entitled to vote as local government electors, but not as parliamentary electors.

Where a person whose name is entered as a local government elector in any registration unit is not entitled to vote in respect of that entry at the local government elections for all the local government electoral areas which comprise that unit, the registration officer shall place a mark against his name, with a note to signify that the person against whose name the mark is placed is not entitled to vote for the local government elections mentioned in the note, and any such note shall be deemed to be part of the register.

* * * * * *

Register to be made up in street or alphabetical order.

4. Where the registration unit is situated in a parliamentary borough, the names in the register shall be arranged in street order, unless the authority whose clerk the registration officer is or by whom he is appointed considers that, having regard to the general character of the area forming the registration unit, arrangement in street order is inapplicable; and where the registration unit is situated in a parliamentary county, the names in the register shall be arranged in alphabetical order, unless the said authority considers that, having regard to the general character of the area forming the registration unit, arrangement in street order is possible and convenient.

Effect of register.

5. The registers for the registration units making up any constituency, so far as they relate to parliamentary electors, shall together form the register of parliamentary electors for that constituency, and the registers of the registration units making up any local government electoral area, so far as they relate to local government electors, shall together form the register of local government electors for that area.

Duty of Registration Officer to prepare and publish Lists.

Duty of registration

6. It shall be the duty of the registration officer to cause a house to house or other sufficient inquiry to be made, and to prepare or cause

to be prepared lists (in this Act referred to as electors lists) for each registration unit within his registration area of all persons appearing to be entitled to be registered as parliamentary or local government electors in the spring and autumn register respectively, and to publish those lists in the form in which the register is to be framed, as respects the lists for the spring register on or before the first day of February (*a*), and as respects the lists for the autumn register on or before the first day of August (*b*).

Duty of registration officer to prepare electors lists.

The registration officer shall at the same time publish a notice specifying the mode in which, and the time within which, claims and objections are to be made under these rules.

(*a*) This date is now 17 January (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).
(*b*) This date is now 15 July (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

7. The registration officer, where he does not himself perform the duties of overseers, may require the overseers of any parish which, or any part of which, forms a registration unit within his registration area to make the necessary inquiries and to prepare the electors lists for that unit and publish the lists in the unit on his behalf, and it shall be the duty of the overseers to furnish lists as so required, and also at any time, if required by the registration officer, to furnish that officer with information respecting any persons resident or occupying land or premises in their parish, or the removal of any person from the parish.

Duty of overseers to prepare electors lists and furnish information if required.

Any reasonable expenses incurred by the overseers in performing any duties required of them in pursuance of this rule (including reasonable remuneration where the duties are performed by an assistant overseer or other paid officer) shall be paid by the registration officer as part of his registration expenses. In this rule the expression "overseers" includes any person for the time being executing any of the duties of overseers.

8. The registration officer shall publish, together with the electors lists, the corrupt and illegal practices list (if any) made by him under section thirty-nine of the Corrupt and Illegal Practices Prevention Act, 1883, or made by or sent to him under section twenty-four of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Corrupt and illegal practices list.

Claims to be Registered.

9. Any person who claims to be entitled to be registered as a parliamentary or local government elector, and who is not entered, or is entered in an incorrect place or manner or with incorrect particulars on the electors lists, may claim to be registered, or to be registered correctly, by sending to the registration officer a claim in the prescribed form not later than the eighteenth (*a*) day of February where the claim is for the spring register, and the eighteenth (*a*) day of August where the claim is for the autumn register.

Claim to be sent to registration officer.

(*a*) For "eighteenth" read "tenth" (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

10. The form of claim for a person making a claim on his own behalf shall contain a declaration of the qualification of the claimant to be registered, including a declaration that the claimant has attained the required age, and is a British subject, and of the character in which the claimant desires to be registered, that is to say, either as a parliamentary elector, or as a local government elector, or as a local government elector who is not entitled to vote for all local government elections, and where the claimant claims in respect of a non-residential qualification a declaration of residence or, in case such person has no settled residence, an address to which communications may be sent. A note shall also be

Form of claim.

Schedule 1. Section 10.

added to the form warning the claimant that any false declaration for the purpose of this provision will involve a penalty.

Where a claim is made on behalf of a claimant by another person, the registration officer shall not enter the name of the claimant on the register, unless the matters required to be stated in the declaration under the foregoing provision are proved to his satisfaction.

Publication of lists of claimants.

11. It shall be the duty of the registration officer to publish the lists of claimants, as respects the lists for the spring register not later than the twenty-fourth (*a*) day of February, and as respects the lists for the autumn register not later than the twenty-fourth (*a*) day of August.

(*a*) For "twenty-fourth" read "sixteenth" (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

Objections.

Notice of objections.

12. Any person whose name appears on the electors lists for a constituency or local government electoral area may object to the registration of any person whose name is included in the electors lists for the constituency or the local government electoral area, as the case may be, by sending notice of objection in the prescribed form to the registration officer not later than the fifteenth (*a*) day of February in the case of the spring register and the fifteenth (*a*) day of August in the case of the autumn register, and may object to the registration of any person whose name is included in the list of claimants by sending notice of objection in the prescribed form to the registration officer not later than the seventh day of March (*b*) in the case of the spring register and the fourth day of September (*b*) in the case of the autumn register.

(*a*) For "fifteenth" read "fourth" (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

(*b*) For the dates in the text read "24 February" and "24 August" respectively (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

Notice to persons affected by objection.

13. The registration officer shall, as soon as practicable after receiving any notice of objection, send a copy of the notice to the person in respect of whose registration the notice of objection is given.

Publication of objections to lists.

14. It shall be the duty of the registration officer to publish a list of the names of persons to whose registration notice of objection has been given not later than the twenty-first (*a*) day of February in the case of the spring register and not later than the twenty-first (*a*) day of August in the case of the autumn register.

(*a*) For "twenty-first" read "sixteenth" (12 & 13 Geo. 5, c. 12, s. 1 and Sched. Pt. I.).

Publication of objections to claims.

15. It shall be the duty of the registration officer to publish a list of the names of persons included in the list of claimants to whose registration notice of objection has been given as soon as practicable after the seventh day of March (*a*) in the case of the spring register and the fourth day of September (*a*) in the case of the autumn register.

(*a*) See note (*b*) to rule 12, *supra*.

Absent Voters List.

* * * * * *

Preparation of the Register from the Lists.

Consideration of objections.

20. The registration officer shall, as soon as practicable, consider all objections of which notice has been given to him in accordance with these rules, and for that purpose shall give at least five clear days' notice to the objector and to the person in respect of whose registration the notice of objection has been given, of the time and place at which the objection will be considered by him.

21. The registration officer shall also consider all claims of which notice is given to him in accordance with these rules, and in respect of which no notice of objection is given, and, if he considers that the claim may be allowed without further inquiry, shall give notice to the claimant that his claim is allowed. Consideration of claims.

If the registration officer is not satisfied that any such claim can be allowed without inquiry, he shall give at least five clear days' notice to the claimant of the time and place at which the claim will be considered by him.

22. If on the consideration of any claim or objection it appears to the registration officer that the claimant, or person in respect of whose name objection is taken, is not entitled to be entered on the register in the character in which he claims to be registered, or in which he is entered on the list, but is entitled to be entered on the register in another character or in another place on the register, the registration officer may decide that the name of that person shall be so entered on the register. Supplemental powers on consideration of claims and objections.

23. The registration officer shall make such additions and corrections in the electors lists (including the absent voters list) as are required in order to carry out his decisions on any objections or claims, and shall also make any such corrections in those lists by way of the removal of duplicate entries (subject to any expression of choice by the person affected as to those entries), the expunging of the names of persons who are dead or subject to any legal incapacity, or the placing of marks or the correction of marks placed against the name of an elector, or otherwise as he thinks necessary in order to secure that no person is registered as a parliamentary elector in respect of more than one qualification in the same constituency, or as a local government elector in respect of more than one qualification— Correction of lists.

(*a*) in the same borough for the purpose of borough council elections; or

(*b*) in the same electoral division or ward for the purpose of county council, metropolitan borough council, and urban district council elections; or

(*c*) in the same parish or ward of a parish for the purpose of rural district council, guardians, or parish elections;

and otherwise to make those lists complete and accurate as a register.

* * * * * *

25. Where the registration officer makes any correction in the lists (including the absent voters list) otherwise than in pursuance of a claim or objection, or for the purposes of correcting a clerical error, he shall give notice to the person affected by the correction, and give that person an opportunity of objecting to the correction, and, if necessary, of being heard with respect thereto. Objections to corrections.

26. The registration officer shall make all the necessary corrections of the lists (including the absent voters list) and do everything necessary to form those lists into a register (with a separate letter and a separate series of numbers for each polling district) in time to allow the publication of the lists so corrected as a register as required by these rules. Formation of lists into register.

Duty to publish and deliver Copies of the Register.

27. It shall be the duty of the registration officer to publish the spring register not later than the fifteenth day of April, and the autumn register Publication of register.

Schedule 1. Section 27.

not later than the fifteenth day of October in each year, by publishing a notice that a copy of the register is open to inspection at his office, and that copies of the part of the register relating to any registration unit are open to inspection during business hours in the registration unit at the place mentioned in the notice.

It shall be the duty of the registration officer to keep copies of the register for inspection in his office, and also to arrange for copies of the part of the register relating to any registration unit being kept for inspection in that unit either in the principal post office (if the Postmaster General gives authority for the purpose) or at some other convenient place to which the public have access to be arranged by him.

It shall be the duty of the registration officer to transmit a copy of the register, as soon as may be after it is published, to the Local Government Board.

Delivery of copies of the register.

28. It shall be the duty of the registration officer, on the application of any person during business hours and on payment of the prescribed fee, to furnish copies to the applicant of the register or of so much of the register as relates to any registration unit.

Appeals from Registration Officer.

Notice of appeal from registration officer.

29. A person desiring to appeal against the decision of a registration officer must give notice of appeal in the prescribed form to the registration officer and to the opposite party, if any, when the decision is given or within five days thereafter, specifying the grounds of appeal.

The registration officer shall forward any such notices to the county court in manner directed by rules of court together, in each case, with a statement of the material facts which, in his opinion, have been established in the case, and of his decision upon the whole case and on any point which may be specified as a ground of appeal, and shall also furnish to the court any further information which the court may require and which he is able to furnish.

Appeals relating to the same point.

30. Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall inform the county court of the fact for the purpose of enabling the county court (if the court thinks fit) to consolidate the appeals, or select a case as a test case.

General.

Publication of documents.

31. Where the registration officer by these rules in required to publish any document, and no specific provision is made as to the mode of publication, he shall publish the document by making copies of the document available for inspection by the public in his office, and in the chief post office (if the Postmaster General gives authority for the purpose) or some other convenient place in the area forming the registration unit to which the document relates and, if he thinks fit, in any other manner which is, in his opinion, desirable for the purpose of bringing the contents of the document to the notice of those interested.

Any document required to be published shall be kept published for the prescribed time.

Any failure to publish a document in accordance with these rules shall not invalidate the document, but this provision shall not relieve the registration officer from any penalty for such a failure.

If any person without lawful authority destroys, mutilates, deface

or removes any notice published by the registration officer in connection with his registration duties, or any copies of a document which have been made available for inspection in pursuance of these rules, he shall be liable on summary conviction to a fine not exceeding five pounds.

Duty of registration officer to supply forms.

32. The registration officer shall, without fee, on the application of any person, supply forms of claims and notices of objections.

Supply of copies of claims, objections, &c.

33. The registration officer shall, on the application of any person, allow that person to inspect, and take extracts from, or on payment of the prescribed fee, supply to that person copies of, the electors lists for any registration unit in his area and any claim or notice of objection made under these rules.

Mode of sending notices, &c.

34. Any claim or notice of objection which is under these rules to be sent to the registration officer may be sent to him by post addressed to him at his office.

Any notice which is required to be sent by the registration officer under these rules to any person shall be sufficiently sent if sent by post to the address of that person as given by him for the purpose, or as appearing on the lists, or if there is no such address, to his last known place of abode.

Information from householders.

35. The registration officer may require any householder or any person owning or occupying any land or premises within his area, or the agent or factor of such person, to give, in the prescribed form, any information in his possession which the registration officer may require for the purpose of his duties as registration officer; and if any person fails to give the required information, or gives false information, he shall be liable, on summary conviction, to a fine not exceeding twenty pounds. Any notice requiring information under this rule may be sent by post.

Access to national register.

36. The registration officer shall, subject to such directions as the Local Government Board may give, have access to the national register compiled under the National Registration Act, 1915.

Declaration as to age and nationality.

37. The registration officer, before registering any person as an elector, may, if he thinks it necessary—

(*a*) require that person either to produce a certificate of birth or, if that is not practicable or convenient, to make a statutory declaration that such person has attained the required age, and

(*b*) require that person to produce a certificate of naturalisation or to make a statutory declaration that he is a British subject.

Where a declaration is so required, any fee payable in connection therewith shall be paid by the registration officer as part of his registration expenses, and the declaration shall be exempt from stamp duty.

The registration officer shall during business hours allow any person to inspect and take a copy of any such declaration.

Power to obtain a certificate of birth at reduced fee.

38. Where for the purpose of the provisions of this Act any person requires a certificate of birth, that person shall on presenting a written requisition in the prescribed form and containing the prescribed particulars, and on payment of a fee of sixpence, be entitled to obtain a certified copy of any entry of the birth of that person in the birth register under the hand of the registrar or the superintendent registrar having the

Schedule 1. Section 38.

custody thereof, and forms of requisition for the purpose shall on application be supplied without charge by every registrar of births and deaths and by every superintendent registrar.

Hearing of claims and objections.

39. On the consideration of any claim or objection or other matter by the registration officer, any person appearing to the registration officer to be interested may appear and be heard either in person or by any other person, other than counsel, on his behalf.

Power to require evidence on oath.

40. The registration officer may at the request of any person interested, or if he thinks fit without such request, on the consideration of any claim or objection or other matter require that the evidence tendered by any person should be given on oath and may administer an oath for the purpose.

Provisions as to misnomer or inaccurate description.

41. No misnomer or inaccurate description of any person or place on any list or on the register or in any notice shall prejudice the operation of this Act or these rules as respects that person or place, provided that the person or place is so designated as to be commonly understood.

Reckoning of time.

42. In reckoning time for the purpose of these rules, Sunday, Christmas Day, Good Friday, and any bank holiday or day set apart as a public holiday, or day of public fast, or public thanksgiving shall be excluded; and where anything is required by these rules to be done on any day falls to be done on any such day, that thing may be done on the next day not being one of any such days.

* * * * * *

Section 42.

SIXTH SCHEDULE.

ADAPTATION OF ACTS.

* * * * * *

2. A reference to local government electors registered under this Act shall, so far as local government elections and the right to vote at any such elections are concerned, be substituted for any reference in any other Act to local government electors, county electors, burgesses, parochial electors, or other persons entitled to vote at a local government election, by whatever name called, and local government electors so registered shall for all purposes, whether statutory or not, be in the same position as any such local government electors, county electors, burgesses, parochial electors, or persons.

3. A reference to the register kept in pursuance of this Act shall, so far as it relates to parliamentary electors, be substituted for any reference in any Act to the parliamentary register of electors or to the parliamentary register or to the register of parliamentary electors or to the register of persons entitled to vote at a parliamentary election, by whatever name called, and, so far as it relates to the local government register shall be substituted for the local government register of electors, the burgess roll, the county register, the register of parochial electors, and for the register of persons entitled to vote at a local government election by whatever name called.

4. The registration officer shall be substituted for the overseers in sections eleven and twelve of the Parliamentary and Municipal Registration Act, 1878, and in any other enactment dealing with the duties of

the overseers in connection with the registration of electors; and in sections thirty-nine, sixty-eight and sixty-nine of the Corrupt and Illegal Practices Prevention Act, 1883, "registration officer" means the registration officer under this Act. Schedule 6. Section 4.

5. Subsection (4) of section forty of the Local Government Act, 1888, shall have effect as if the words "for the time being" were substituted for the words "at the passing of this Act"; and, in order to meet any difficulty (consequent on the change of boundaries under this provision) in filling casual vacancies by election in the London County Council, any such casual vacancy shall, until the first election of the whole number of councillors which takes place after the passing of this Act, be filled by means of the choice by the Council of a person to fill the vacancy, and the councillor so chosen shall hold office in such manner and in all respects as if he had been elected to fill the vacancy.

6. Sections eleven and thirteen and (so far as necessary) section twelve of the Parliamentary and Municipal Registration Act, 1878, shall be adapted so as to be applicable to parishes situated in any constituency or in any local government area, and for that purpose "constituency" shall be substituted in those sections for "parliamentary borough," "local government area" for "municipal borough," and "registered as a local government elector" for "enrolled as a burgess."

7. The Local Government Board may, by order, make such further adaptations in the provisions of any Act (including any local Act and any Act to confirm a Provisional Order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them necessary to make those provisions conform with the provisions of this Act; and any order so made shall operate as if enacted in this Act.

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EIGHTH SCHEDULE. Section 47.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
* *	* *	* *
13 & 14 Vict. c. 57.	The Vestries Act, 1850 .	Section seven from "to give the notices for claims" to "for revising them, and," and the words "burgess lists and the".
* *	* *	* *
30 & 31 Vict. c. 102.	The Representation of the People Act, 1867.	The whole Act (except sections one, two, seven, thirty-seven, forty-nine to fifty-two, fifty-seven, fifty-nine, and sixty-one, and Schedule H.); section fifty-nine from "and in construing" to the end of the section.
* *	* *	*

Schedule 8.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
32 & 33 Vict. c. 41.	The Poor Rate Assessment and Collection Act, 1869.	Section seven so far as it relates to franchise and any disqualification which depends on franchise; section ten, and section nineteen so far as it relates to franchise and any disqualification which depends on franchise.
* *	* *	* *
35 & 36 Vict. c. 33.	The Ballot Act, 1872 .	Section five; section eight from "all expenses" to "by law payable," and (except as respects Scotland and Ireland) from "where the sheriff" to the end of the section; subsection (5) of section sixteen, subsection (4) of section seventeen, sections eighteen and nineteen, section twenty-five from "or where" to "is proved on such trial to have voted at such election" and from "or so retained" to end of the section; section thirty-three from "and shall continue in force" to the end of the section; rules 3 and 58 in the First Schedule.
* *	* *	* *
39 & 40 Vict. c. 61.	The Divided Parishes and Poor Law Amendment Act, 1876.	Section fourteen.
* *	* *	* *
41 & 42 Vict. c. 26.	The Parliamentary and Municipal Registration Act, 1878.	The whole Act so far as unrepealed (except sections one, two, eleven, twelve, thirteen and fourteen).
* *	* *	* *
42 & 43 Vict. c. 10.	The Assessed Rates Act, 1879.	The whole Act as far as it relates to franchise and any disqualification which depends on franchise.
* *	* *	* *
44 & 45 Vict. c. 68.	The Supreme Court of Judicature Act, 1881.	Section fourteen as far as respects appeals in registration matters.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section nine; in subsection (2) of section eleven the words from "on (*b*) Being entitled" to "to be made," and the words "In either of those cases"; sections thirty-two and thirty-three; subsection (3) of section forty-two; section forty-four; paragraphs (1) to (7) of section forty-five; sections forty-six to forty-nine; in subsection (2) of section fifty-one the words "or vote in more than one ward"; sections sixty-three, seventy-one, and seventy-six, subsections (1) and (3) of section two hundred and nine, section two hundred and forty-four, Part I. of the Third Schedule, in rule four of Part II. of the Third Schedule, the words "or entered in the separate "non-resident list required by "this Act to be made," Part IV. of the Third Schedule, rule one of Part II. of the Fifth Schedule so far as respects expenses incurred in relation to the enrolment of burgesses, and Forms C to G in Part II. of the Eighth Schedule.

Schedule 8.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
46 & 47 Vict. c. 51.	The Corrupt and Illegal Practices Prevention Act, 1883.	Sub-section (2) of section thirty-two; paragraph (*c*) of subsection (1) of section thirty-three; subsection (1) of section thirty-five from "and may charge" to the end of the sub-section; subsection (3) of section thirty-nine; section forty-seven; the definitions of "registration officer" in sections sixty-four and sixty-eight; subsection (12) of section sixty-eight; subsection (4) of section sixty-nine from "in the manner" to the end of the sub-section; subsection (9) of section sixty-nine; paragraph (7) of Part I. of the First Schedule; paragraph (1) of Part II. of the First Schedule; in the "Form of Return of Election Expenses" in Part I. of the Second Schedule the first paragraph under the heading "Expenditure."
* *	* *	* *
47 & 48 Vict. c. 70.	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	Subsection (3) of section thirteen.
* *	* *	* *
48 & 49 Vict. c. 9.	The Municipal Voters Relief Act, 1885.	The whole Act so far as unrepealed.
48 & 49 Vict. c. 15.	The Registration Act, 1885.	The whole Act so far as unrepealed (except sections sixteen, nineteen, and twenty); the definitions of "ownership voter," "fifty pounds rental voter," and "occupation voter" in section nineteen.
* *	* *	* *
48 & 49 Vict. c. 46.	The Medical Relief Disqualification Removal Act, 1885.	The whole Act so far as unrepealed.
* *	* *	* *
51 & 52 Vict. c. 10.	The County Electors Act, 1888.	The whole Act so far as unrepealed.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Paragraph (*b*) of subsection (2) of section two from "or is registered" to the end of the paragraph; paragraph (xii) of section three; subsection (6) of section thirty-four; proviso twelve in section seventy-five; sections seventy-six and seventy-seven; in paragraph (6), of section eighty-three the words "registration of parliamentary voters or to the," the words "or to any registration matters," and the word "registration" where it lastly occurs; in subsection (2) of section ninety-two the word "occupation" and the words "of making out and "revising the lists of voters, of "conducting any parliamentary "election"; subsection (3) of section ninety-two.
* *	* *	* *

Schedule 8.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
54 & 55 Vict. c. 11.	The Electoral Disabilities Removal Act, 1891.	The whole Act.
54 & 55 Vict. c. 18.	The Registration of Electors Act, 1891.	The whole Act.
* *	* *	* *
54 & 55 Vict. c. 68.	The County Councils (Elections) Act, 1891.	Section two.
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	Sections forty-three and forty-four.
* *	* *	* *
4 & 5 Geo. 5, c. 25.	The Electoral Disabilities (Naval and Military Service) Removal Act, 1914.	The whole Act.
* *	* *	* *

ECCLESIASTICAL TITHE RENTCHARGE (RATES) ACT, 1920.

(10 & 11 GEO. 5, c. 22.)

An Act to reduce temporarily the rates payable in respect of Ecclesiastical Tithe Rentcharge. [4th August 1920.]

Partial relief of ecclesiastical tithe rentcharge from rates.

1.—(1) The owner of the tithe rentcharge (*a*) attached to an ecclesiastical corporation (*a*) or benefice (*a*) shall not be liable to pay, in respect of any rate (*a*) made on or after the first day of April nineteen hundred and twenty, and before the first day of January nineteen hundred and twenty-six (*b*), which is assessed on him as owner of that tithe rentcharge, an amount in excess of such an amount as would have been payable by him if the rate had been made at such amount in the pound as is equal to the amount in the pound (to be ascertained in accordance with the rules set out in the Schedule to this Act) at which the corresponding rate was made in the year nineteen hundred and eighteen, and the excess shall be deemed to be recoverable.

A Circular and Memorandum of the M. of H. in the Appendix, *post*, Vol. II., which explain the Act, may be consulted with advantage.

(*a*) See the definition in sub-s. 5.

(*b*) Note that the relief afforded is only temporary in character.

(2) Where the owner of tithe rentcharge attached to a benefice, before payment of the amount payable by him in respect of any such rate as aforesaid, produces to the collector of the rate a statutory declaration made by him in a form prescribed by the Minister of Health (*a*), showing that the total income arising from the benefice (*b*) for the year ending on the fifth day of April preceding the date at which the rate was made, estimated in accordance with the provisions of the Income Tax Acts, did not exceed three hundred pounds, or, if it exceeded that sum, did not exceed five hundred pounds, the owner shall be entitled to such relief or abatement in respect of such rate as follows, that is to say, if the total income arising from the benefice did not exceed three hundred pounds the owner shall not be liable to any payment in respect of the rate, and if it exceeded that sum, but did not exceed five hundred pounds the owner shall be allowed an abatement of one-half of the amount which would otherwise be payable by him in respect of the

rate having regard to the preceding provisions; and the amount of any relief or abatement in respect of a rate given by this section shall be deemed to be irrecoverable. Section 1.

A statutory declaration made for the purpose of this section shall be exempt from stamp duty.

(*a*) See the Ecclesiastical Tithe Rentcharge (Form of Statutory Declaration) Orders, 1920 and 1921, in the Appendix.

(*b*) It has been held that "the total income arising from the benefice" means the total income arising to the incumbent, and that, therefore, when the owner of the benefice is bound to pay certain annual sums to the vicars of other parishes and to the late incumbent of the benefice, he is entitled to deduct such sums in making his statutory declaration of the total income (*R.* v. *Latchingdon Overseers* (1921), 86 J. P. 43).

Where benefices have been united under s. 16 of the Pluralities Act, 1838, the income from each benefice is separately rateable and relief may be granted under this section in respect of each benefice, though the income from both together may exceed the amount in the section (*Keane* v. *Ashbocking Overseers*, [1922] 1 K. B. 143; 85 J. P. 270).

(3) Nothing in this Act shall affect the allowance to be made in respect of rates in the assessment of tithe rentcharge for any rate or tax.

(4) Any amount paid by the owner of tithe rentcharge in respect of any rate to which this Act applies in excess of the amount which he is by virtue of this Act liable to pay shall be recoverable on demand made within six months after the passing of this Act as a debt due to him by the collector of the rate, and such amount shall be so recoverable notwithstanding that the statutory declaration required by this Act to entitle the owner to exemption or relief was not produced to the collector of the rate before payment of the rate if such declaration is so produced on or before the demand for repayment.

(5) In this Act the expression "ecclesiastical corporation" has the same meaning as in the Episcopal and Capitular Estates Act, 1851; the expressions "benefice" and "owner of tithe rentcharge" and "tithe rentcharge" have the same meanings as in the Tithe Rentcharge (Rates) Act, 1899; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes and which is leviable on the basis of an assessment in respect of the yearly value of property. 14 & 15 Vict. c. 104. 62 & 63 Vict. c. 17.

2. This Act may be cited as the Ecclesiastical Tithe Rentcharge (Rates) Act, 1920. Short title.

SCHEDULE. Section 1.

RULES FOR DETERMINING AMOUNT IN THE POUND OF CORRESPONDING RATE.

(1) Where a rate (hereinafter referred to as "a current rate") is made in respect of any yearly, half-yearly, or other period, and a corresponding rate in the year nineteen hundred and eighteen (hereinafter referred to as "the standard rate") was made in respect of the like period, the amount in the pound of the standard rate shall, for the purposes of this Act, be treated as the amount in the pound at which the corresponding rate was made.

Schedule. —

(2) Where a current rate is made in respect of any yearly, half yearly, or other period, and the standard rate was made in respect of a shorter or longer period, then—

(a) in the former case, the aggregate of the amounts in the pound of the standard rates made in respect of the periods covered by the period in respect of which the current rate is made shall, for the purposes of this Act, be treated as the rate in the pound at which the corresponding rate was made;

(b) in the latter case, such part of the amount in the pound of the standard rate as bears to the whole of that amount the same proportion as the period in respect of which the current rate is made bears to the period in respect of which the standard rate was made shall, for the purposes of this Act, be treated as the rate in the pound at which the corresponding rate was made.

(3) If by reason of the constitution or extension of a borough or urban district, the consolidation of rates, or other change of circumstances any question arises as to the rate to which a current rate corresponds, the question shall be determined in accordance with any general or special regulations which the Minister of Health may make for the purpose (*a*), and such regulations may provide for the manner in which, in cases to which the regulations apply, the rate in the pound of the corresponding rate is to be calculated, and for a rate being treated as two or more rates according to the purposes for which it was levied, and for making adjustments when the proportion of the rateable value on which tithe rentcharge is assessed to a current rate differs from the proportion on which it was assessed to the standard rate, or when any other circumstances render such adjustment necessary.

(*a*) Regulations were made by the M. of H. by Order dated August 5th, 1920. See the Order in the Appendix, *post*, Vol. II.

(4) Where in the year nineteen hundred and eighteen no rate was made which corresponds to or under regulations made as aforesaid is deemed to correspond to a current rate, the amount in the pound at which the corresponding rate was made in that year shall, for the purposes of this Act, be treated as nil.

PUBLIC HEALTH (TUBERCULOSIS) ACT, 1921.

(11 & 12 GEO. 5, c. 12.)

An Act to make further provision with respect to arrangements by local authorities for the treatment of tuberculosis (*a*). [12th May 1921.]

(*a*) The effect of the National Health Insurance Act, 1920, was to take away from the Insurance Committees the responsibility of providing institutional treatment for tuberculous insured persons as from 30th April, 1921, the date when sanatorium benefit ceased, and it was considered to be essential that provision should be made for continuing the treatment without break. County and county borough councils, with very few exceptions, had at the date of the passing of this Act already made arrangements for the institutional treatment of tuberculous persons in their areas, whether insured or non-insured. These arrangements were made in accordance with schemes or agreements approved by the M. of H. or his predecessors. Section 1 (1) of this Act provides that councils which have made such arrangements and which continue them shall, for the purposes of the Act, be deemed to have made adequate arrangements for the treatment of tuberculosis.

Those councils who had not made arrangements for the general institutional treatment of tuberculosis are required by s. 1 (2) to make adequate arrangements to that end. In default, the Minister is empowered to act himself at the cost of a defaulting council. **Note.**

Further provision with respect to arrangements for treatment.

1.—(1) Where the council of any county or county borough has, before the passing of this Act, made arrangements for the treatment of persons suffering from tuberculosis (including persons insured under the National Health Insurance Acts, 1911 to 1920) at or in dispensaries, sanatoria, and other institutions in accordance with a scheme approved by the Local Government Board or the Minister of Health, that council shall, for the purposes of this Act, be deemed to have made adequate arrangements for the treatment of tuberculosis so long as such scheme, with such modifications, if any, as the Minister may on the application of the council from time to time approve, continues in operation.

In the application of this subsection to Wales an agreement made with the King Edward the Seventh Welsh National Memorial Association, and approved by the Welsh Insurance Commissioners or the Minister of Health, shall be treated as equivalent to a scheme approved by the Minister of Health, and an application made by that association with the approval of a council shall be deemed to be an application of the council.

(2) Where the council of any county or county borough fails to make adequate arrangements for the treatment of tuberculosis at or in dispensaries, sanatoria, and other institutions approved by the Minister, the Minister may, after giving the council an opportunity of being heard, make such arrangements as he may think necessary for the purpose of such treatment.

Any expenses incurred by the Minister in arranging for such treatment may be paid in the first instance by the Minister out of moneys provided by Parliament, and the amount of any expenses certified by the Minister to have been so incurred shall be paid to the Minister on demand by the council and shall be recoverable as a debt due to the Crown.

This subsection shall not apply in the case of any council which at the date of the passing of this Act is deemed to have made adequate arrangements as aforesaid and which fails to continue to make such arrangements by reason only of the withdrawal of, or diminution in the rate of, the contributions made from the Exchequer before the passing of this Act to the councils of counties and county boroughs in aid of the treatment of tuberculosis.

After-care by councils of counties and county boroughs.

1 & 2 Geo. 5, c. 55.

2. Without prejudice and in addition to any other power, whether under this or any other Act, every council of a county or county borough shall have power to make such arrangements as they may think desirable for the after-care of persons who have suffered from tuberculosis (including persons for the time being insured under the National Insurance Act, 1911, as amended or extended by any past or future enactment), and the provisions of this Act relating to committees and joint committees

Section 2.

shall extend accordingly as though in those provisions the expression "treatment of tuberculosis" included such after-care.

Approval of institutions.

3. Any approval by the Minister of Health of an institution for the treatment of tuberculosis may be given for such time and subject to such conditions as the Minister may think fit, and the Minister shall have power to withdraw any such approval.

Power to act through committees.

4. The powers of a county or county borough council in relation to the treatment of tuberculosis (other than the power of raising a rate or of borrowing money) may be exercised through a committee of the council or through a sub-committee or any committee, and the council and, subject to any directions of the council, the committee may appoint as members of the committee or sub-committee, as the case may be, persons (including members of insurance committees) who are not members of the council, being persons specially qualified by training or experience in matters relating to the treatment of tuberculosis, but not less than two-thirds of the members of such committee or sub-committee shall consist of members of the council.

Joint committees.

5.—(1) For the purpose of facilitating co-operation between county councils and county borough councils in the exercise of the powers conferred upon them by any enactment to make arrangements for the treatment of tuberculosis, the Minister may by order, with the consent of the councils concerned, make such provision as appears to him necessary or expedient, by the constitution of joint committees or otherwise, for the joint exercise by such councils of all or any of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates, the expenses incurred by such councils are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the purposes of the order.

(2) Every such joint committee shall be a body corporate by such name as the order constituting the committee may direct, and shall have perpetual succession and a common seal, and may hold land for the purpose of their powers and duties without licence in mortmain.

(3) Any joint committee constituted under any enactment repealed by this Act shall continue in existence and have all the powers which may be exercised by any joint committee constituted under this section, and any order constituting such joint committee shall continue in force and have effect accordingly.

Powers of Metropolitan Asylums Board.

6. The managers of the Metropolitan Asylums District may, with the approval of the Minister of Health, enter into agreements with the council of any county or county borough for the reception of persons suffering from tuberculosis in hospitals or sanatoria provided by the managers.

Further provision with respect

7.—(1) The Minister may by order constitute an advisory committee for the purpose of assisting the council of any county or county borough

in making arrangements for the treatment of any persons suffering from tuberculosis who are masters, seamen, or apprentices to the sea service or the sea-fishing service. Section 7. — to treatment of seamen.

(2) An order under this section may provide—

(*a*) For the representation on the said committee of any society approved under the National Health Insurance Acts, 1911 to 1920, more than three-fourths of whose members are such masters, seamen and apprentices as aforesaid, and of the council of any county or county borough having a substantial number of such masters, seamen, and apprentices resident within their area, and may contain such other provisions as may appear necessary to the Minister for giving effect to the order; and

(*b*) If the governing body constituted under subsection (6) of section forty-eight of the National Insurance Act, 1911, as amended by section twenty-seven of the National Health Insurance Act, 1918, agree to contribute, out of the special fund referred to in the said subsection (6), towards the expenses of the said committee, for the appointment by the governing body aforesaid from among their own members of the representatives on the said committee of all such societies as aforesaid. 7 & 8 Geo. 5, c. 62.

(3) An order made under this section may be revoked or varied by another order so made.

8.—(1) Any expenses incurred under this Act by a county council shall be defrayed as expenses for general county purposes, or, if the Minister of Health by order so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order. Expenses.

(2) Any expenses incurred under this Act by the council of a county borough shall be defrayed as part of the expenses of the council in the execution of the Public Health Acts, 1875 to 1908.

9.—(1) This Act may be cited as the Public Health (Tuberculosis) Act, 1921. Short title, repeal, and application.

(2) The enactments specified in the second column of the Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(3) This Act shall not apply to Scotland or Ireland.

SCHEDULE. Section 9.

Session and Chapter.	Short Title.	Extent of Repeal.
1 & 2 Geo. 5, c. 55.	National Insurance Act, 1911.	Subsection (3) of section sixty-four.
6 & 7 Geo. 5, c. 12.	Local Government (Emergency Provisions) Act, 1916.	Section sixteen.

Section 1.

PUBLIC HEALTH (OFFICERS) ACT, 1921.

(11 & 12 GEO. 5, c. 23.)

An Act to amend the Law relating to the Appointment and Tenure of Office of Medical Officers of Health, Sanitary Inspectors, and Inspectors of Nuisances, and for other purposes. [28th July 1921.]

Tenure of office of medical officer of health.

1. In cases to which this section applies, the medical officer of health of a local authority who by the terms of his appointment is restricted from engaging in private practice as a medical practitioner shall not be appointed for a limited period only and shall be removable by the authority with the consent of the Minister of Health or by the Minister and not otherwise.

This section applies to—

(a) the medical officer of health of a county borough where any portion of the salary of the medical officer was paid out of moneys voted by Parliament before it was constituted a county borough ;

(b) the medical officer of health of a county district any portion of whose salary is paid out of the county fund of the county in which the district is situate and charged to the Exchequer contribution account.

The provisions of this section relating to removal from office apply to medical officers whether appointed before or after the commencement of this Act (see s. 5).

Tenure of office and appointment of sanitary inspectors.

2.—(1) In cases to which this subsection applies, the sanitary inspector of a local authority who is required by the terms of his appointment to devote the whole of his time to the duties of his office or to the duties of that office and of any other office or offices held by him under any local or public authority, shall not be appointed for a limited period only and shall be removable by the authority with the consent of the Minister of Health or by the Minister and not otherwise.

This subsection applies to—

(a) the sanitary inspector of a county borough where any portion of the salary of the sanitary inspector was paid out of moneys voted by Parliament before it was constituted a county borough ;

(b) the sanitary inspector of a county district any portion of whose salary is paid out of the county fund of the county in which the district is situate and charged to the Exchequer contribution account ;

Provided that, where more than one sanitary inspector is appointed by a local authority, the foregoing paragraphs (*a*) and (*b*) of this subsection shall apply only to the senior sanitary inspector as determined by the local authority.

The provisions of this sub-section relating to removal from office apply to sanitary inspectors whether appointed before or after the commencement of this Act (see s. 5).

(2) An urban sanitary authority shall have power to appoint two or more sanitary inspectors. Section 2.

The generally accepted view was that under s. 189 of the P. H. Act, 1875, only one sanitary inspector could be appointed, although an urban authority might appoint assistant inspectors.

3.—(1) In this Act the expression "sanitary inspector" includes an inspector of nuisances appointed under the Public Health Act, 1875, and an inspector of nuisances shall henceforth be designated a sanitary inspector. Definition of "sanitary inspector." 38 & 39 Vict. c. 55.

(2) In this Act the expression "local authority" means an urban or rural sanitary authority within the meaning of the Public Health Acts or a port sanitary authority.

4. Nothing in this Act shall prevent a local authority from making, with the sanction of the Minister of Health, a temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties or any of them, shall, subject to the terms of his appointment, have all the powers and liabilities of a duly appointed medical officer of health or sanitary inspector as the case may be. Temporary appointments.

The provisions of this section will obviate any difficulty such as that which was considered in *Lewis* v. *Weston-super-Mare L. B.*, *ante*, p. 57. There was already in s. 191 of the P. H. Act, 1875, *ante*, p. 454, power to appoint a deputy medical officer in case of illness or incapacity of the M. O. H.

5. The provisions of this Act relating to the removal from office of medical officers of health and sanitary inspectors shall apply to such officers and inspectors whether appointed before or after the commencement of this Act. Application to existing officers.

6. Section twenty-four of the Local Government Act, 1888 (*a*) (which provides for payments by county councils to local authorities in respect of the salaries of medical officers of health and sanitary inspectors), shall have effect as if the reference in subsection (2) thereof to the Public Health Act, 1875, included a reference to this Act. Application of s. 24 (2) of 51 & 52 Vict. c. 41.

(*a*) See this section at p. 756, *ante*.

7.—(1) The provisions of paragraphs (*b*) and (*c*) of subsection (2) of section one hundred and eight of the Public Health (London) Act, 1891 (which relate to the removal and appointment of medical officers of health of metropolitan borough councils), shall apply to the chief or senior sanitary inspectors of metropolitan borough councils and to the medical officers of health and the chief or senior sanitary inspector of the port sanitary authority of the Port of London as they apply to the medical officers of health of metropolitan borough councils, and those provisions shall have effect accordingly. Provisions as to London. 54 & 55 Vict. c. 76.

(2) Save as provided by this section, this Act shall not apply to the administrative county of London.

8. This Act shall not extend to Scotland or Ireland. Extent of Act.

Section 9. Construction of Act.

9. This Act shall, except so far as it relates to the administrative county of London, be read as one with the Public Health Acts.

See as to the effect of this provision the note under s. 1 of the Private Street Works Act, 1892, *ante*, p. 870.

Short title and commencement of Act.

10. This Act may be cited as the Public Health (Officers) Act, 1921, and shall come into operation on the first day of April, nineteen hundred and twenty-two.

HEALTH RESORTS AND WATERING PLACES ACT, 1921.

(11 & 12 GEO. 5, c. 27.)

An Act to empower Local Authorities to advertise Health Resorts and Watering Places. [28th July 1921.]

Power of local authority to levy rate for advertisement.

1. Subject to the provisions of this Act, the council of any borough or urban district may advertise the advantages and amenities of the borough or district, or any part thereof, as a health resort or watering place by the insertion of advertisements in newspapers not published within the borough or district so sought to be advertised, or by handbooks or leaflets, or by placards at railway stations, and may expend money for the purpose as provided by this Act.

It should be noted that the marginal note to this section is incorrect, no *rate* can be levied for the purposes of the Act: see s. 2, *infra*, and note thereto. (See also note to s. 43 of P. H. A., 1907, *ante*, p. 1046.)

Expenses.

2. The council of any borough or urban district may expend for the purposes of this Act the profits received by them from the letting of chairs, tents, tent sites, bathing machines, platform sites for entertainments, and sites of stalls for beach vendors, or from charges for admission to any gardens, parks, inclosures, and places of interest, in respect of which such council are entitled to make such charges, or from any other profits which accrue to such council in providing entertainments or recreation for visitors, provided that the council shall not be entitled to expend any other money for such purposes, and the sum so expended in any one financial year shall not exceed the amount which would be produced by a rate of one penny in the pound levied on the rateable value of the borough or district.

It will be seen that recourse cannot be had to the rates even to the extent of the produce of a penny rate. Moreover, the amount of the produce of a penny rate is the limit to which a council may resort to profits of chair-letting, etc.

Adoption of Act by local authorities. 53 & 54 Vict. c. 59.

3. This Act shall extend to any borough or urban district in England or Wales in which it is adopted under the provisions of the Public Health Acts Amendment Act, 1890, and section three of that Act (*a*) shall have effect as if this Act were an adoptive part of that Act.

(*a*) See the section, *ante*, p. 820.

Application to Scotland.

4. This Act in its application to Scotland shall be subject to the following modifications :—

"Burgh" shall be substituted for "borough," and references to urban districts shall not apply.

5. This Act may be cited as the Public Resorts and Watering Places Act, 1921, and shall not extend to Ireland. **Section 5.** Short title and extent.

FINANCE ACT, 1921.

(11 & 12 GEO. 5, c. 32.)

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and the National Debt, and to make further provision in connection with Finance.

[4th August 1921.]

* * * * * *

23. Where under any of the provisions of the Food and Drugs Acts, 1875 to 1907, as amended by the Excise Transfer Order, 1909, any article of food or drug is to be sent to the Commissioners for analysis, the article of food or drug shall, instead of being so sent, be sent to the Principal Government Chemist at the Government Laboratory, and the said chemist shall make an analysis and give a certificate to the justices or court of the result of the analysis. Duties of Commissioners of Customs and Excise in relation to analysis of articles under Food and Drugs Acts, 1875 to 1907, transferred to Government Chemist.

* * * * * *

34.—(1) Income tax shall not be charged in respect of a sewer vested in a local authority in the United Kingdom: Exemption of sewers from income tax.

Provided that the foregoing exemption shall not extend to any rent payable or other annual payment to be made by the local authority in respect of the sewer.

(2) In this section—

The expression "sewer" means a sewer maintained by a local authority in pursuance of their statutory duties in relation to the public health;

The expression "local authority" means a public body having power under any enactment relating to the public health to construct and maintain sewers.

REPRESENTATION OF THE PEOPLE ACT, 1922.

(12 & 13 GEO. 5, c. 12.)

An Act to alter certain dates prescribed by the Representation of the People Act, 1918, in connexion with the registration of electors, and to amend section fifty-four of the Local Government Act, 1888. [31st May 1922.]

1. The dates fixed by the Representation of the People Act, 1918 (*a*) (in this Act referred to as "the principal Act"), for the end of the qualifying period and for certain other purposes in connexion with the Revision of dates. 7 & 8 Geo. 5, c. 64.

Section 1.

registration of electors, shall be modified in the manner shown, as respec England and Wales in Part I., as respects Scotland in Part II., and respects Northern Ireland in Part III., of the Schedule to this Act ; an the principal Act shall have effect accordingly.

(*a*) See the Act, *ante*, p. 1092.

Amendment of s. 54 of 51 & 52 Vict. c. 41.

2. Where a representation has been made to a Secretary of Sta under section fifty-four of the Local Government Act, 1888 (*a*), amended by any subsequent enactment, to the effect that it is desirab to alter the boundary of any electoral division of a county in Englar or Wales, or the number of county councillors and electoral divisio in any such county, and where such notice of the proposal in the repr sentation has been given as may have been prescribed by the Secreta of State, the Secretary of State may, if he thinks fit, having rega to all the circumstances of the case, make an order under the sa section without causing any local inquiry to be made :

Provided that, if any local authority in or for the county, or a number of local government electors registered for any electoral divisi in the county, not being less than one hundred or than one-sixth of t electors, whichever number is the smaller, petition the Secretary State against the proposal in the representation, the Secretary of Sta shall not make an order without a local inquiry.

(*a*) See the section referred to, *ante*, p. 768.

Short title.

3.—(1) This Act may be cited as the Representation of the Peop Act, 1922, and the Representation of the People Acts, 1918 to 1921, a this Act may be cited together as the Representation of the Peop Acts, 1918 to 1922.

(2) [*Ireland.*]

SCHEDULE.

Section 1.

1. This schedule shows—

(*a*) the provisions of the principal Act referring to dates affected l this Act ;

(*b*) the subject-matter to which the respective dates relate ;

(*c*) the dates fixed by the principal Act ;

(*d*) the dates to be substituted therefor under this Act.

. . . . . .

PART I.

England and Wales.

(a) Provision of principal Act.	(b) Subject-matter.	(c) Dates fixed by principal Act.		(d) Dates to be substituted under this Act.	
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ections 6 and 11. chedule I.:	End of qualifying period .	15 Jan.	15 July	15 Dec.	15 June
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Rule 12 .	Last day for notice of objections to electors lists .	15 ,,	15 ,,	4 Feb.	4 August
Rule 9 .	Last day for claims . .	18 ,,	18 ,,	10 ,,	10 ,,
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Rule 11 .	Publication of list of claimants . . .	24 ,,	24 ,,	16 ,,	16 ,,
Rule 12 .	Last day for objections to claimants . . .	7 March	4 Sept.	24 ,,	24 ,,
Rule 15 .	Publication of list of objections to claimants . .	7 ,,	4 ,,	24 ,,	24 ,,

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PART III.

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[In view of the possibility of a Bill for the consolidation of the above Acts being introduced and passed into law in the present Session of Parliament (1922) it has been thought advisable to take out of Vol. I. the above Acts and to insert them or the Consolidation Act (if any) which replaces them in Vol. II.; *see therefore* the index at the end of Vol. II.]

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